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Addressing the plight of undertrials in Indian Prisons: Reviewing the Framework and Inadequacies of the Legislature governing undertrial Prisoners in relation to Human Rights

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Within the Indian prison system, an alarming two-thirds of inmates are undertrials awaiting trial. These individuals often find themselves incarcerated due to their inability to afford bail. This paper delves into the legal presumption of 'innocent until proven guilty' through the scrutinization of the failure of the judiciary to effectively implement Section 436A of The Code of Criminal Procedure (CrPC) and questions its compatibility with the Right to Equality enshrined in Article 14 of the Indian Constitution. Through the presentation of statistical data, it aims to shed light on how the bail system is biased in favor of the affluent, resulting in an unjust dispensation of justice that disproportionately affects the poor. Moreover, it explores the inadequacy of legal aid, instances of police torture, and the dire living conditions experienced by undertrials. Notably, it emphasizes the failure to maintain a clear segregation between undertrials and convicted criminals. To conclude, the paper discusses how to move forward given the situation, offering suggestions such as increased legal funding and alternative dispute resolution.

Keywords: *undertrials, prison, human rights, trial, bail system.*

INTRODUCTION

Under trials are individuals who are detained without conviction while awaiting trial.[1] They are presumed innocent until proven guilty. While the primary objective of holding undertrials in custody is to ensure a fair trial by preventing witness tampering[2], the alarming human rights issue lies in the prolonged delay of their cases. This delay leads to a significant number of undertrial prisoners, primarily from impoverished backgrounds, languishing in jails for extended periods, often exceeding the time they would have spent if convicted.[3] The existing administrative system, marred by corruption, impedes these individuals from exercising their constitutional rights.

As per the latest data from the National Crime Records Bureau (NCRB)[4], Indian prisons currently house over 2.8 lakh undertrial prisoners, comprising approximately two-thirds of prison inhabitants. The delay in case trials, caused by an overburdened judicial system, exacerbates the problem. This is portrayed in an initial examination conducted by the National Human Rights Commission (NHRC) emphasizing the need for urgent action.

In its ruling dated April 24th, 2015, the Supreme Court issued an order addressing the deplorable conditions prevailing in 1382 prisons, aptly titled 'Re-Inhuman Conditions'.[5] The order mandated the formation of Undertrial Review Committees (UTRCs) in every district across the nation, intending to ensure justice and safeguard the rights of undertrial prisoners. These UTRCs were directed to convene quarterly meetings, bringing together key stakeholders such as the National Legal Services Authority (NALSA), the Ministry of Home Affairs and the State Legal Services Authorities (SLSAs).

The Supreme Court's directive, driven by a deep concern for the well-being and rights of undertrial prisoners, sought to bring about systemic reform. The establishment of UTRCs in

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[1] Law Commission, *Congestion of Under-trial Prisoners in Jails* (Law Com No 78, 1979) para 1.28
[2] *Problem of Overcrowding in Indian Prisons – A study of undertrials as one of the factors* (Institute of Correctional Administration Chandigarh, 2000) pg 1
[3] Warren L. Miller, 'The Bail Reform Act of 1966: Need for Reform in 1969' (1970) 19(1) Catholic University Law Review 24
[4] National Crime Records Bureau, *Prison Statistics India* (Ministry of Home Affairs, 2015)
[5] *Re - Inhuman Conditions in 1382 Prisons* (2016) SC 993

every district and the periodic review of cases marked a significant step toward ensuring fairness and justice in the criminal justice system. This proactive approach aimed to address the lack of burstiness and complexity that had long plagued the realm of undertrial justice. However, progress in implementing and upholding these policies has been immensely slow.

To address this issue, it is crucial to provide separate accommodations for undertrials within prisons, segregating them from convicted prisoners. The Model Prison Manual recognizes the importance of this separation and prohibits any contact between undertrials and convicted prisoners. This measure helps protect the rights and safety of undertrial prisoners.

This paper seeks to highlight the barriers to justice faced by undertrials in relation to their constitutional rights. Notably, the significance of Section 436A[6] in relation to upholding equality under Article 14[7] of the Constitution will be discussed. The paper also discusses legal reforms to address the issue of detaining undertrial prisoners, overlaid by the core doctrines of justice and equity.

UNDERSTANDING THE UNDERTRIAL PRISONER SYSTEM

Classification: The categorization of detainees awaiting trial should solely be based on considerations of security, discipline, and institutional programming. Any attempt to classify them based on social status should be avoided. Their entitlement to provisions such as diet, clothing, bedding, and interview privileges should align with those granted to other prison categories. The classification of detainees awaiting trial is as follows:

Class I: Individuals involved in terrorist and extremist activities (specially designated high-security prisoners with the necessary authorization from higher authorities).[8]

Class II: High-risk prisoners implicated in cases of murder, dacoity, robbery, rape, habitual offenses, previous escapees, and drug trafficking.[9]

[6] Code of Criminal Procedure Code 1973, s 436A
[7] Constitution of India 1950, art 14
[8] Amrita Chakraborty, 'Plight of Under Trial Prisoners: A study under human rights perspective' (2021) 7(7) Journal of Contemporary Issue of Law 38

Mentally ill prisoners, juvenile offenders, and women under protective custody should not be housed with detainees awaiting trial[10], despite being classified as such. This is to ensure that their unique needs and vulnerabilities are appropriately addressed, thereby promoting a safer and more conducive environment.

Lastly, any individual detained under Section 122(2) of the Criminal Procedure Code should be considered a detainee awaiting trial until their case has been adjudicated by either the Sessions Court or the High Court. This principle upholds the integrity of the justice system and ensures that their rights and entitlements are preserved until a final decision is reached, thereby maintaining fairness, due diligence, and the rule of law.

ADMISSION PROCESS AND CONDUCT IN RELATION TO UNDERTRIAL PRISONERS

The admission process for undertrial prisoners entails strict adherence to a set of necessary documents. No individual shall be granted entry into a prison as an undertrial prisoner unless accompanied by the following:

Remand Warrant: This warrant, meticulously prepared and duly authorized by the competent authority, must be completed in the prescribed format. Each individual under trial requires a separate writ, warrant, or order, even in cases where multiple prisoners have been jointly accused.[11]

Identification Roll: An integral part of the admission process, the identification roll must include a minimum of two specific permanent identification marks. These marks, such as deep scars, birthmarks, or moles, should be carefully recorded, indicating their precise location on the individual's body.[12]

The following procedures contribute to the smooth and efficient functioning of prisons, ensuring the fair treatment and security of undertrial prisoners within the bounds of the law:

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[9] *Ibid*
[10] *Ibid*
[11] Bureau of Police Research and Development, *Model Prison Manual For the Superintendence and Management of Prisons in India* (Bureau of Police Research and Development New Delhi, 2003)
[12] *Ibid*

Scrutinizing Remand Warrants: The officer on duty holds the authority to refuse admission to under-trial prisoners whose remand warrants do not comply with the appropriate form[13]. If the warrant exhibits discrepancies in name or identification or lacks the signature of the competent authority, the officer must report the issue using the prescribed form to the relevant authorities.

Safekeeping of Personal Property: The possessions of undertrial prisoners shall remain in the custody of the court during their time within the prison.[14]

Admission Hours: Undertrial prisoners should be admitted during the regular working hours of the prison. Exceptions to this rule include female offenders and prisoners for whom an identification parade is scheduled. Prisoners arriving after the designated lock-up hour should be confined to a designated area specifically set aside for such circumstances.[15]

Timely Escorting: While escorting under-trial prisoners, utmost care must be taken to ensure their timely arrival at the destination before the lock-up hour. If it is anticipated that the undertrial prisoners will reach their destination after the lock-up hour, the transferring prison, sub-prison, or relevant police or military officials must provide sufficient advance notice to the receiving prison.[16]

Separation of Approvers: In the case of an undertrial prisoner who has been admitted as an approver or a confessing accused by the court, special measures must be taken to keep them separate from other individuals involved in the same case.[17] If separate cells or compartments exist within the undertrial ward, they should be utilized for this purpose. In the absence of dedicated compartments, these prisoners may be housed in separate cells during the day and separate wards during the night, with the condition that they are not subjected to solitary confinement.[18] The separation should not impose any burdensome conditions beyond what is

[13] *Ibid*
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*
[17] Prisons Act 1984, s 27
[18] *Ibid*

necessary to prevent direct or indirect communication with other prisoners involved in the same or different cases.[19]

LEGISLATIVE FRAMEWORK: EXAMINING THE CRIMINAL PROCEDURE CODE

The cornerstone of a civilization and a fundamental element for instilling public trust lies in the equitable, rational, and efficacious administration of justice. Section 436 elucidates that an undertrial individual, apprehended for minor transgressions enduring confinement beyond seven days after the grant of bail, shall be presumed indigent and thereby granted liberty through a Personal Release Bond by the trial court.

Similarly, in cases of grave offenses, Section 436A, mandates that if the undertrial prisoner has served more than half the maximum sentence prescribed for the offense with which they stand charged, they shall be released upon a Personal Release Bond by the trial court.

The insertion of Section 436A in 2005 sought to ensure that undertrial prisoners were not unduly detained due to the sluggish progress of their legal proceedings. It is noteworthy that Section 436A exclusively pertains to undertrial prisoners and imposes only two prerequisites for its application: firstly, the detainee must face trial for an offense that does not warrant the death penalty, and secondly, the period of detention must exceed half the maximum term of imprisonment stipulated by law.

If a prisoner meets these requirements, the Court must release them on a personal bond. The second proviso to this Section further stipulates that no individual, regardless of any circumstance, may be detained for a duration surpassing the maximum term of imprisonment decided in the trial. The bail and bond provisions are primarily enshrined in Chapter XXXIII of the CrPC. When accused of a bailable offense, an individual possesses the right to be granted bail, which can be conferred by either the police or the judiciary. If the accused fails to furnish a surety within one week of arrest, they shall be deemed 'indigent' and should be liberated on a personal bond without requiring any form of surety.

[19] *Ibid*

Conversely, if an individual is charged with a non-bailable offense, the grant of bail is not an automatic entitlement. However, the law does extend preferential consideration for granting bail in specific circumstances. These include cases where the accused is under sixteen years of age, a woman, afflicted by illness or infirmity, or when the court deems it just and appropriate for any other compelling reason to grant bail.[20] The Supreme Court has opined that when exercising discretion in matters pertaining to non-bailable offenses, the judge must consider several factors, notably the severity of the crime, prior convictions, the likelihood of evidence tampering or witness intimidation, and the risk of absconding.[21] Furthermore, in cases tried by a magistrate, if the trial cannot be concluded within 60 days from the initial date set for evidence presentation, and if the accused has been detained under custody during this time, they may be released.[22]

If an individual accused of a non-bailable offense remains in custody after the completion of the trial but before the pronouncement of judgment, and if there are reasonable grounds to presume the accused's innocence, the person should be released on a bond without the need for sureties to ensure their appearance for the judgment.[23] There are additional circumstances under which the right to be granted bail arises. For instance, if the investigation or charge sheet is not completed within sixty or ninety days, as applicable, even in cases of serious crimes, the accused is entitled to be released on bail.[24] Furthermore, if an individual has already served one-half of the maximum prescribed imprisonment for an offense (excluding those punishable by death) while still an undertrial prisoner in custody, they should be released by the court on their personal bond, with or without sureties[25]. Additionally, no individual can be detained for a period longer than the maximum prescribed term of imprisonment for an offense during the period of their investigation and subsequent trial.[26]

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[20] *Kewal Krishan Kumar v Enforcement Directorate* (2023) SCC OnLine Del 1547
[21] *Nagendra v King-Emperor* AIR 1924 Cal 476
[22] Code of Criminal Procedure1973, s 167(2)
[23] *Ibid*
[24] *Ibid*
[25] *Ibid*
[26] Code of Criminal Procedure 1973, s 436A

In the case of *Hussain and another v Union of India*[27], the Supreme Court issued the following directive, acting as a complementary measure to Section 436-A: 'If an undertrial has already served a period of custody exceeding the likely sentence in the event of conviction, they must be released on a personal bond. The concerned trial courts must regularly assess this criterion. It is an oft-observed reality that in numerous instances where individuals face charges for minor offenses punishable by a maximum term of three years or less, the legal proceedings remain pending for extended periods. The impoverished and defenseless among them languish in prisons for protracted durations, as there is no one to secure their release or advocate on their behalf.

The very pendency of criminal proceedings for such extended periods constitutes a mechanism of oppression in itself. Even in cases where the offenses carry a maximum penalty of seven years, the prosecutions often drag on for years within the criminal courts. Many times, the accused individuals belong to marginalized segments of society and are unable to afford competent legal counsel. In 2012, nearly 74% of the undertrial population either lacked literacy or had educational attainment below Class 10.[28] Similarly, Muslims (21%), Scheduled Castes (22.4%) and Scheduled Tribes (13.3%) are disproportionately represented.[29] There have been instances where the accused, held in custody, are not produced in court for every scheduled hearing, resulting in multiple adjournments of their cases.

The effectiveness of Section 436A relies on the assumption that undertrials endure protracted periods of confinement. However, the NCRB reveals that, on average, 40% of undertrials were incarcerated for fewer than three months between 2001 and 2010.[30] This population constituted the largest segment among detention periods. During the same time frame, over 60% of undertrials were detained for fewer than six months.[31]

[27] *Hussain and another v Union of India* (2017) 5 SCC 702
[28] National Crime Records Bureau (n 4)
[29] *Ibid*
[30] *Ibid*
[31] *Ibid*

The effectiveness of employing a Section 436-A-oriented strategy comes under scrutiny when considering the nature of the offenses for which these individuals are being prosecuted. It has been estimated that during the period from 2001 to 2010, a staggering 75% of undertrials in the country were detained for offenses carrying a maximum punishment of three years or more.[32] Consequently, under Section 436-A, these individuals could potentially face detention for a period of up to 18 months. Notably, the offense category that predominated among undertrials was murder, comprising an average of nearly 22% of all undertrials each year.[33] As a result, while a significant majority of undertrials experience relatively short periods of detention, the offenses they are being examined for or accused of entail lengthy sentences.

The combination of these factors leads to an inescapable conclusion: only a minimal number of undertrials stand to benefit from the provisions of Section 436-A. Despite the commendable surge in enthusiasm to implement this provision, it is unlikely to serve as a viable solution to the overarching issue of the undertrial problem.

The examination of the interrelationship between undertrial detentions and the severity of the offenses elucidates a perplexing predicament. The efficacy of Section 436A in ameliorating the undertrial conundrum remains doubtful, given the statistical evidence and the complex dynamics at play. To rectify this multifaceted issue, it becomes imperative to issue appropriate directives to safeguard and uphold the right to life and personal liberty, enshrined in Article 21[34] which complies with judicial principles set out in landmark precedents.

PRISONER'S RIGHTS ARE HUMAN RIGHTS: THE REALITY THAT UNDERTRIAL PRISONERS FACE

The Indian Constitution, in Part III[35], ensures equality before the law for all individuals on a non-discriminatory basis. Article 14[36] establishes these principles, guaranteeing every person

[32] 'India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid' (*Tata Trusts*, October 2019) <https://indiajusticereport.org/files/IJR_2019_Full_Report.pdf> accessed 25 July 2023
[33] *Ibid*
[34] Constitution of India 1950, art 21
[35] Constitution of India 1950, part III
[36] Constitution of India 1950, art 14

the right to be treated equally. Additionally, Article 15[37] enumerates the five grounds on which no individual should face discrimination. However, an inherent flaw in the system becomes apparent when we delve into the issue of undertrials being unable to access bail due to economic disadvantage. This leads to prolonged incarceration for those who are financially impoverished, in stark contrast to their financially secure counterparts. These disparities raise questions about the significance accorded to the liberty of the wealthy in comparison to the general populace.

***Financial incapacity and an imbalanced bail system*:** Why should an individual's financial incapacity increase their vulnerability to imprisonment? The current system appears unjust and biased, as it leaves the economically disadvantaged at a higher risk of being incarcerated. This disparity not only highlights the failure of the justice delivery system but also underscores the unequal treatment within it. The disproportionate representation of scheduled castes and tribes and persecuted religious groups, such as Muslims, among undertrials,[38] accentuates the growing vulnerability and bias faced by these marginalized groups. This trend points to a systemic breakdown, further exacerbating the issue at hand.

On the other hand, the bail system, designed to ensure the pretrial release of individuals, is inherently skewed against the poor. Financially disadvantaged individuals find it difficult to secure their liberty as they lack the means to furnish bail, regardless of the bail amount set by the magistrate[39]. Even a relatively small sum can pose a significant challenge for the majority of those entangled in criminal cases[40]. This disparity perpetuates discrimination, as it leaves the less privileged without the means to secure their release, while the affluent can navigate the system with ease.

***Inadequate legal aid and resources*:** In a landmark judgment[41], Justice Iyer reiterated that human dignity is fundamentally intertwined in the constitutional culture under Articles 14, 19

[37] Constitution of India 1950, art 15
[38] National Crime Records Bureau (n 4)
[39] 'Bail and Its Discrimination Against the Poor: A Civil Rights Action as a Vehicle of Reform'(1974) 9(1) Valparaiso University Law Review
[40] Law Commission, *Reform of Judicial Administration* (Law Com No 14, 1971)
[41] *Prem Shankar Shukla v Delhi Administration* AIR 1980 SC 1535

and 21. This ruling sought to eliminate the distinction between undertrials from different socio-economic backgrounds, emphasizing equal treatment for all. By ensuring equal rights and protection for every individual, regardless of their economic status, the judgment aimed to rectify the existing inequalities within the bail system.

***Police torture and delayed investigation procedures*:** In contemporary society, the prevalent existence of handcuffing and police torture persists, even in the absence of any legal distinction between social classes. The differentiation of risk, which would justify the shackling of the impoverished while sparing the affluent, remains unsubstantiated. This flawed mechanism, as elucidated by Lois Wacquant[42], wrongly advocates for 'restrictive workfare' for the deserving destitute and 'expansive prison fare' for the so-called 'undeserving' marginalized urban populace. With the ever-widening economic divide fostered by this system, correctional facilities and custodial institutions have transformed into instruments employed by the state to subdue the 'unruly classes' perceived as a threat to the prevailing status quo. Presently, penitentiaries worldwide are increasingly utilized as a means of social control, aided by the negligence and misapplication of enacted legislation. One such example is preventive detention.

Additionally, a substantial majority of individuals awaiting trial find themselves languishing in prison due to the protracted nature of police investigations and the delayed filing of charge sheets. This issue is particularly pronounced in the state of Assam, where an alarming 80 out of every 100 cases remain pending before the courts, with a staggering 59% of cases yet to undergo police scrutiny.[43] While the low police-population ratio of 182 per 100,000 inhabitants[44] is one contributing factor, the pervasive corruption prevailing within the ranks of law enforcement exacerbates the situation, often emerging as the primary cause of

[42] Loïc Wacquant, 'Crafting the Neoliberal State: Workfare, Prisonfare and Social Insecurity' (2010) 25(2) Sociological Forum 197–220

[43] Dipti Jain, 'The slow moving wheels of Indian judiciary' (*Mint*, 05 August 2014) <http://www.livemint.com/Opinion/VlqmTLJ1UzNtmKd7BuRVbM/The-slow-moving-wheels-of-Indian-judiciary.html> accessed 25 July 2023

[44] Bureau of Police Research & Development, *Police Performance Indices in Extremist and Non-Extremist Affected Areas of India: an Introspection – Assam State Report* (Peace Studies, Omeo Kumar Das Institute of Social Change & Development)

prosecutorial delays and unwarranted arrests. Moreover, the practice of police officials resorting to unjustified or unnecessary apprehensions to showcase progress in high-profile cases further compounds the problem, with a staggering estimate suggesting that a colossal 60% of all arrests are deemed unnecessary.[45]

Delving deeper into this matter, it becomes evident that the inherent flaws within the investigative and trial processes have far-reaching consequences. The dearth of prompt and meticulous investigation engenders a climate of uncertainty, leaving those awaiting trial in a state of limbo, unsure of their fate. The delayed filing of charge sheets adds another layer of complexity[46], creating a backlog of cases that overwhelms the courts[47] and impedes the delivery of justice. As a result, the already overburdened judicial system finds itself grappling with a staggering caseload[48], further exacerbating the length of time individuals spend in pretrial detention.

The ramifications of the situation can be attributed, in part, to the inherent challenges faced by law enforcement agencies. The insufficient police-population ratio in Assam[49] underscores the strain on resources, impeding effective and expeditious investigations. However, the crux of the issue lies in the endemic corruption permeating the police force, which engenders a culture of malfeasance and derails the quest for justice.[50] This lamentable reality not only undermines public trust in the system but also results in an alarming number of unnecessary arrests, with law enforcement officials resorting to such measures to maintain the façade of progress in high-profile cases.

The repercussions of such systemic deficiencies are profound. Individuals who are presumed innocent until proven guilty find themselves ensnared within an unforgiving system, their lives disrupted, and their freedom curtailed. Lengthy pretrial detention, caused by the

[45] National Crime Records Bureau (n 4)
[46] Jeffrey A Butts and Gregory J. Halemba, 'Delays in Juvenile Justice Sanctions Project Final Report' (National Center for Juvenile Justice, 1996) <https://www.ojp.gov/pdffiles1/Digitization/171640NCJRS.pdf> accessed 25 July 2023
[47] *Ibid*
[48] *Ibid*
[49] Bureau of Police Research & Development (n 44)
[50] *Ibid*

extended investigation and trial processes[51], leads to severe psychological distress and social alienation.[52] Moreover, the backlog of cases overburdens the courts[53], compromising their ability to dispense timely justice and undermining the fundamental principles of a fair and equitable legal system.

***Overcrowding, appalling living conditions, and chronic health problems*:** Indian correctional facilities have perennially grappled with the predicament of overcrowding, a fact evident in recurring statistical data. The NCRB has published information on its website indicating that in 2016 alone, 1,469 individuals succumbed to natural and unnatural deaths while under judicial custody.[54] The reasons behind these fatalities encompass suicide, murders committed by inmates, deaths caused by fellow prisoners, assaults by external elements, negligence on the part of prison staff, and various other factors.[55]

The gravity of this issue is underscored in *Khatri v State of Bihar*[56], where 80 individuals were subjected to blinding through puncturing and acid pouring by police officials. Within the confines of overcrowded prisons, a distressing reality unfolds. Inmates endure deplorable living conditions[57], forsaken by basic hygiene standards[58] and stripped of their rights to privacy and human dignity[59]. The issue at hand extends beyond a mere lack of space, infiltrating the core of inmate well-being.

Cells originally designed for one or two occupants now hold two or three times that number, turning already cramped spaces into virtual mazes. This unfortunate reality paints a vivid picture of a system stretched beyond its limits, with facilities designed to accommodate 650

[51] Butts (n 46)
[52] *Ibid*
[53] *Ibid*
[54] National Crime Records Bureau (n 4)
[55] *Ibid*
[56] *Khatri v State of Bihar* (1981) SCC (1) 627
[57] Chakraborty (n 8)
[58] *Ibid*
[59] *Ibid*

individuals being excessively burdened by an inmate population of 2,200.[60] Privacy, an essential human need, becomes an unattainable luxury as most toilets lack doors, forcing prisoners to forgo this basic right. In this unsanitary environment, breeding grounds for health hazards and epidemics take root, exacerbating an already grave situation. For example, a study conducted by the National Human Rights Commission on custodial deaths in judicial custody highlighted a significant proportion of fatalities attributable to tuberculosis among prisoners.

Justice Leila Seth, the esteemed chairperson of the inquiry committee appointed to investigate the tragic death of Rajan Pillai in Tihar Jail[61], provides a firsthand account of the abysmal health facilities provided for prisoners. These insights shed light on the special responsibility that falls upon prison administrations to safeguard the health and well-being of the incarcerated. Locked behind bars, prisoners face a unique predicament—they are unable to choose the medical treatment they require, placing them at a significant disadvantage. Unfortunately, systemic problems continue to plague the prison system. For instance, many prisons suffer from an acute shortage of medical personnel. The number of doctors and paramedical staff falls woefully short of what is necessary to adequately attend to the healthcare needs of the inmate population.

Justice Leila Seth's observations[62] on the state of healthcare within Tihar Jail, a prominent correctional facility, offer further insight into the severity of the issue. In 1995, out of the seventeen authorized positions for medical officers, a mere six were occupied. Alas, even within this small number, two were consistently absent from their duties. Consequently, a meager four medical officers were left to tend to a prison population of approximately 9,000 inmates[63]. The scarcity of qualified medical professionals within the prison walls underscores the dire need for immediate intervention.

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[60] Bhavna Vij Aurora, 'The Horror of Indian Jails' (India Today, 26 June 2011) <http://indiatoday.intoday.in/story/right-to-justice-bill-jails-turn-into-nightmares-forundertrials/1/142622.html> accessed 25 July 2023

[61] Chakraborty (n 8)

[62] *Ibid*

[63] *Ibid*

The lack of adequate medical facilities within prisons can be attributed to a twofold problem: the dearth of full-time doctors and the absence of essential infrastructure. Well-equipped ambulances, stretchers, dispensaries and hospital beds are all in short supply, hampering the delivery of proper care. Consequently, incarcerated individuals often find themselves in need of urgent medical attention that cannot be met within the confines of the prison. The consequences of such systemic failures are severe, casting a shadow of uncertainty and neglect over the health and well-being of the prisoner population.

To summarize, the distressing reality faced by inmates within overcrowded prisons serves as a stark reminder of the urgent need for prison reforms. The unsanitary conditions, lack of privacy, and inadequate healthcare facilities present a profound threat to the well-being and dignity of those confined. To truly address these systemic issues, concerted efforts must be made to address the overcrowding crisis, allocate sufficient resources for medical personnel, and ensure the provision of essential infrastructure. Only through such comprehensive measures can we begin to rectify the grave injustices and neglect that have befallen our prison system.

***Psychological trauma, drug abuse, and recurring criminal activity*:** Within prison walls, the escalating issue of drug addiction not only gives rise to physical ailments but also paves the way for other diseases, including AIDS and tuberculosis. The intertwining of drugs and criminal activity is an ever-strengthening bond that cannot be ignored.

According to Mr. Sankar Sen, an authority in the field, evidence suggests that major drug syndicates actively recruit prisoners to amplify the consumption and distribution of illicit substances, stress, and psychological trauma during their time behind bars. The experience of imprisonment often breeds feelings of depression, isolation, and neglect. To address these challenges, it is essential to provide comprehensive counseling services to prisoners, not merely to alleviate their temporary despair but to imbue them with hope, a sense of purpose, and the necessary skills for successful reintegration into society upon their release.

Justice Seth has emphasized the urgent need for a comprehensive overhaul of prison infrastructure and healthcare provisions.[64] Many correctional facilities lack a robust communication system that would promptly alert the relevant authorities in the event of a medical emergency. Establishing such a system is crucial, along with ensuring that inmates are well-informed about how to seek medical assistance in critical situations. Alarming statistics provided by the NHRC of India reveal that a significant 58.19% of prisoners are under trial and await conviction. It is disheartening to note that a majority of these undertrial detainees come from impoverished backgrounds, with limited access to resources and hail from rural or agricultural communities.

The reality faced by countless detainees, deprived of their liberty and subjected to prolonged detention in deplorable conditions while awaiting trial stands in stark contrast to the principles of justice and human rights. Likewise, those suffering from mental illness are often denied proper medical treatment and opportunities for rehabilitation. To review, it is evident that the challenges associated with pervasive drug addiction, and the necessity of addressing mental health concerns in prisons, demand immediate attention. By humanizing the relationship between prisoners and prison staff, implementing comprehensive counseling programs, and revamping prison infrastructure to ensure proper medical care, we can work towards a system that upholds the rights and well-being of those in custody, while fostering hope and effective reintegration into society.

***Deprivation of the right to a speedy trial*:** The violation of the principles enshrined in Article 21[65] occurs when the legal process becomes unduly protracted, resulting in the deprivation of a speedy trial. Within the context of Article 21, which mandates a fair, just and reasonable procedure, the right to a speedy trial assumes paramount importance. This right encompasses all stages of the legal proceedings, from the initial investigation to appeals and retrials.[66] It safeguards the accused from unwarranted incarceration, which not only entails physical confinement but also inflicts mental anguish.

[64] Chakraborty (n 8)
[65] Constitution of India 1950, art 14
[66] *Abdul Rehman Antulay v R S Nayak* AIR 1988 SC 1531

However, it is worth noting that the right to a speedy trial does not prescribe a specific time limit for the completion of the trial once it is set in motion, as it is impracticable for the court to ascertain such a timeframe.[67] It is imperative to recognize that a speedy trial, defined as 'reasonably expeditious'[68] underscores the provisions enshrined in Article 21. The government cannot absolve itself of its obligation to provide swift justice by citing financial constraints or other spending priorities.[69]

The failure to ensure expeditious justice has been strongly criticized[70], with the judiciary being admonished for incarcerating individuals for extended periods without trial. Such a disregard for the right to a speedy trial is an abhorrent affront to justice. In cases where the right to a speedy trial has been disregarded, the subsequent judgment resulting in conviction may be invalidated as it lacks fairness and equity.

There are two significant reasons why it is imperative to ensure a speedy trial, apart from the imperative of upholding the principles enshrined in Article 21. Firstly, the practice of seeking adjournments as a defense tactic in order to delay the trial is unjust and unfair.[71] Adjournment motions are frequently filed without genuine reasons, leading to unwarranted delays. This prolongs the pendency of the case, causing financial, physical, and mental suffering for the undertrial. Furthermore, this defense strategy places an undue burden on the courts, exacerbating their workload.

Secondly, individuals accused of minor offenses, who may not face prolonged periods of detention if convicted, often have to endure lengthy delays in awaiting their trials.[72] Particularly for those who are poor and lack the means to secure bail, they languish in jail without reprieve. The primary reasons behind the inefficient enforcement of speedy justice lie in the substantial backlog of pending cases and the woefully inadequate judge-to-population

[67] *Ibid*
[68] *Hussainara v Home Secy, Bihar (II)* AIR 1979 SC 1369
[69] *Ibid*
[70] *Kadra Pahidya v State of Bihar* AIR 1981 SC 939
[71] *V Vasanthakumar v HC Bhatia* (2016) 7 SCC 686
[72] *Noor Mohammed v Jethanand* (2013) 5 SCC 202

ratio. Additionally, provisions such as Section 309[73] which grants discretionary powers to the court regarding adjournments, contribute to the recurring phenomenon of seeking adjournments based on subjective notions of reasonability.

The timely dispensation of justice fosters faith in the legal system and bolsters societal stability. Hence, ensuring prompt and efficient delivery of justice is of utmost importance, as any delay in justice amounts to a denial of justice itself.

***Inadequate legal aid*:** India's judicial system grapples with critical challenges that exacerbate the sufferings of undertrial prisoners. Inadequate funding and neglect plague both the prosecutors and the prison management, magnifying the prevailing issues. The dearth of competent public prosecutors and the absence of essential resources hinder their ability to fulfill their weighty responsibilities. The Delhi High Court observed a lack of basic facilities for public prosecutors including unreliable access to legal databases, a shortage of research assistance, and inadequate administrative support. A shortage of public prosecutors stands as a dominant cause for the delays in the disposal of criminal cases. However, the problem extends beyond insufficient infrastructure, unqualified prosecutors, and understaffed prisons with deplorable conditions. The criminal justice system itself suffers from chronic underfunding, reflected in the minuscule allocation of the judiciary in India's budget and the meager resources dedicated to enhancing investigators' knowledge of forensic techniques and evolving modus operandi.

One of the primary issues affecting the timely resolution of criminal cases lies in the scarcity of qualified public prosecutors. Regrettably, even those prosecutors who diligently perform their duties lack the necessary resources to fulfill their obligations effectively. The absence of access to legal databases, research tools, and administrative support impedes their ability to gather crucial information and prepare strong cases. Consequently, the underprivileged undertrial prisoners suffer prolonged incarceration, awaiting their day in court while justice remains elusive.

[73] Code of Criminal Procedure1973, s 309

The worrying state of India's criminal justice system stems from chronic underfunding and neglect. Astonishingly, a meager 1% of the allocated budget in the fiscal year 2014–15 was supplied to the judiciary, reflecting a systemic lack of investment. Equally, disconcerting is the alarming disparity in resource allocation for policing, a critical factor affecting the condition of undertrial prisoners. State governments allocate a mere 3–5% of their budgets to policing, with the majority of funds exhausted on salaries, fuel, and office expenses. The allocation for enhancing investigators' knowledge of forensic techniques and evolving criminal methodologies amounts to a paltry 2%. This dearth of resources further compounds the challenges faced by undertrial prisoners, depriving them of a fair and expeditious trial.

The consequences of these systemic flaws are dire for undertrial prisoners. They endure prolonged detention, often exceeding the period of punishment they would receive if convicted.[74] The absence of efficient judicial proceedings not only denies them justice but also perpetuates the misery of being confined in overcrowded and understaffed prisons.[75] The lack of proper facilities, inadequate healthcare, and insufficient rehabilitation programs further exacerbate their already deplorable conditions.

JUDICIAL PRECEDENTS AND PRINCIPLES RELATING TO UNDERTRIAL PRISONERS

The Indian Judiciary has witnessed significant evolution over the years in safeguarding fundamental human rights, particularly the right to speedy trials. In a landmark verdict, *Maneka Gandhi v Union of India*[76], the Supreme Court stressed the necessity for a fair, just, and reasonable legal process. Following this, in the *Hussainara Khatoon v State of Bihar*[77] case, the concept of speedy trials was reflected upon in light of Article 21 of the Indian Constitution, which guarantees the right to life and liberty. This case shed light on the plight of numerous individuals held in Bihar's prisons, where their trials had been delayed for years on end, despite being accused of trivial offenses that would have resulted in only a few months of

[74] Chakraborty (n 8)
[75] *Ibid*
[76] *Maneka Gandhi v Union of India* (1978) AIR 597
[77] *Hussainara Khatoon v State of Bihar* AIR 1979 SC 1369

imprisonment. The *habeas corpus* petition filed in this case highlighted issues pertaining to prison administration and the deplorable conditions faced by undertrial prisoners.

The central question at hand was whether the right to an expeditious trial and adequate legal aid fell within the ambit of Article 21. The Court, in its ruling, not only affirmed the inclusion of these rights in Article 21 but also established guidelines to ensure humane prison administration. It became evident that the existing bail system suffered from significant flaws, disproportionately affecting the poor who lacked the necessary property for bail. The discretion exercised by judges in releasing undertrial prisoners was also scrutinized. The case highlighted procedural shortcomings in the police system, leading to the establishment of new guidelines for the treatment of undertrial prisoners within the prison system. Consequently, Article 21 underwent a substantial expansion concerning the rights of undertrials.

Following this, *Bhim Singh v Union of India*[78] established the groundwork for a set of directives to be followed by state authorities. This mandated the release of undertrial prisoners who had completed half of their probable maximum sentence. This directive was a remarkable step taken by the Apex Court to address the widely perceived dysfunction of the criminal justice system, where undertrial prisoners face indefinite detention periods before their cases are even heard. The profound concern over the callousness displayed towards prisoners was expanded upon in the *Pehadiya*[79] case, whereby the Court remarked that once individuals accused of an offense are incarcerated, they become forgotten entities, isolated from society, and victims of an unfeeling system.

Shabbu v State of UP[80] established the purpose of Section 428[81] as a means to alleviate the anguish experienced by undertrial prisoners through a credit system that reduces their detention period by the time already served in jail. Subsequently, the *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v Union of India*[82] laid out guidelines to address the

[78] *Bhim Singh v Union of India* WP (Crl) No 310/2005
[79] *Kadra Pahidya v State of Bihar* AIR 1981 SC 939
[80] *Shabbu v State of UP* (1982) CrlLJ 1757
[81] Code of Criminal Procedure 1973, s 428
[82] *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v Union of India* (1995) 4 SCC 695

shortcomings of the bail system. These guidelines stipulated that if an undertrial prisoner was accused of an offense with a maximum imprisonment of up to five years, they should be released upon completing half of the sentence. For offenses carrying a minimum sentence of five years, a minimum bail amount of Rs. 50,000 was mandated. Moreover, for offenses with a sentence exceeding ten years, the release was contingent upon providing Rs. 1 lakh as bail and serving a five-year sentence.[83] However, these guidelines may be insufficient for the destitute, as the required amounts remain prohibitively high. Furthermore, the prompt execution of these provisions has been obstructed by the insistence of trial courts on bail bonds for release.

Jagannath v The State[84] established that it is imperative to release undertrial prisoners if charge sheets have not been filed against them within the prescribed time limit specified in Section 468(2)[85]. Any further detention beyond this timeframe would constitute a violation of their fundamental rights enshrined under Article 21 of the Constitution.

This significant legal precedent underscores the intricate balance between ensuring justice and safeguarding individual liberties. The decision underscores the essence of due process, highlighting the criticality of timely action in the criminal justice system. By mandating the release of undertrial prisoners in such circumstances, the ruling seeks to prevent unnecessary and unjustified deprivation of personal freedom.

On the other hand, the Court in *Common Cause v Union of India*[86] observed that individuals accused of minor offenses, punishable by a maximum of three years, often endure protracted proceedings. The impoverished and helpless languish in jails for extended periods due to the absence of someone to secure their bail or advocate on their behalf.

The issue of financial disparity among undertrial prisoners was highlighted by the apex court in the *Shankara and Ors v State (Delhi Administration)*[87]. The court categorized undertrials as either 'poor' or 'non-poor', noting that the latter category often secures bail within a few hours,

[83] *Ibid*
[84] *Jagannath v The State* (1983) CriLJ 1748
[85] Code of Criminal Procedure 1973, s 468(2)
[86] *Common Cause v Union of India* (1996) 4 SCC 33
[87] *Shankara and Ors v State (Delhi Administration)* (1980) AIR 1535

while the former languish in jail indefinitely due to their inability to fulfill even the minimum surety requirement of Rs. 500–1000. This practice was deemed a clear violation of the freedom and liberty of undertrials solely on the grounds of poverty, resulting in prolonged suffering. The Court emphasized that if an undertrial finds it difficult to furnish a surety even after the relaxation of the bail bond, they are entitled to approach the court for redress.

Finally, in February 2016, the Supreme Court addressed the shocking conditions of undertrial prisoners. The case, titled *Re: Inhuman Conditions in 1382 Prisons*[88], encompassed extensive guidelines for prison reform and the protection of the rights of the accused and undertrials. One of the key directives was that each district would establish an Under Trial Review Committee to work alongside the District Legal Services Authority. This committee's responsibility would be to ensure compliance with Section 436 and Section 436A of the CrPC, while also holding police officers accountable for the living conditions and treatment of prisoners.

In conclusion, the Indian Judiciary has made significant strides in safeguarding the rights of the accused and addressing the challenges faced by undertrial prisoners. Landmark judgments and guidelines have emphasized the importance of a fair, just, and reasonable legal process, guaranteeing the right to a speedy trial and free legal aid under Article 21 of the Indian Constitution. Despite these developments, there are persistent issues surrounding the bail system, systemic abuse and discrimination throughout the police system, and systemic delays in the provision of justice. However, through continuous reform efforts and the implementation of recommended guidelines, India's legal and judicial systems can work towards ensuring a more equitable and efficient criminal justice system that protects the fundamental rights of all individuals.

REFORM

The thorough examination of the complex predicaments faced by individuals awaiting trial reveals the arduous nature of finding viable solutions. Despite the recent directive issued by

[88] *Re: Inhuman Conditions in 1382 Prisons* AIR 2016 SC 993

the Supreme Court in the *Bhim Singh* case, the task at hand is by no means simple. It necessitates active and timely collaboration among multiple stakeholders, including courts, law enforcement agencies, prosecutors, prison administrators, legal aid providers, and the undertrial population themselves. To effectively address the challenges confronting undertrials, a comprehensive approach is imperative, as mere knee-jerk measures like fast-track courts are insufficient. The situation calls for a comprehensive transformation of the entire criminal justice apparatus, particularly key components such as investigation, prosecution, and prison administration. Only then can we hope to witness tangible progress for undertrial prisoners? Achieving this objective will require a combination of funding for infrastructure, enhanced police training, and modernization of the prison system.

Undoubtedly, these are formidable tasks that demand a significant investment of time and resources. However, for immediate outcomes, several potential strategies warrant consideration. First and foremost, it is crucial to target the most easily achievable goals. For instance, the establishment of district judicial committees could prove highly effective. State authorities should closely monitor and, when required, intervene in undertrial review committees (URCs). This recommendation was initially proposed by the Mulla Committee[89] and has been recapitulated time and again in subsequent reports by the Law Commission.[90] URCs can serve as exceptional inter-agency coordinating bodies, facilitating the collaboration of all relevant parties to expedite trials and the release of undertrial prisoners. To this end, URCs can play a vital role in discouraging law enforcement officers from engaging in precipitous or unnecessary arrests. In this regard, it is worth noting that the National Police Commission (1977)[91] has provided clear guidelines, namely Guideline 41, urging the police to avoid hasty arrests. The Supreme Court has also reaffirmed this stance in numerous cases.[92] However, effective implementation of such guidelines necessitates substantial police reforms.

[89] Bureau of Police Research & Development, *IMPLEMENTATION OF THE RECOMMENDATIONS OF ALL-INDIA COMMITTEE ON JAIL REFORM (1980-83)* (Ministry of Home Affairs 2003)
[90] Law Commission of India, *Delay and Arrears in Trial Courts* (Law Com No 77, 1978)
[91] Ministry of Home Affairs, *Third Report National Police Commission* (Ministry of Home Affairs 1977)
[92] *Arnesh Kumar v State of Bihar (*2014) 8 SCC 273

Secondly, urgent and comprehensive reforms are required to address the deficiencies in the nation's struggling legal aid system. This invaluable state apparatus, which has the potential to profoundly impact the lives of countless illiterate and impoverished undertrial prisoners, deserves robust support from both the Union Government and the state governments. With regard to this, The Law Commission has suggested that new lawyers should be required to serve within the legal aid system for two years[93] however, this proposal is still pending implementation. It would do the justice system good if it were put into effect soon.

In order to address the persistent issue of excessive pendency, particularly in cases involving minor offenses, the justice delivery establishment must adopt alternative dispute resolution mechanisms. To this end, globally recognized plea bargaining tools offer a promising solution. Plea bargaining allows the defendant in a criminal case to request a guilty plea to a reduced charge, thereby receiving a recommendation for a lesser sentence.

Thirdly, one of the foremost steps that requires immediate attention is revitalizing the implementation of plea bargaining. Although India introduced this approach in 2006 through the Criminal Law Amendment Act 2005, its practical application has yet to gain significant momentum. Plea bargaining provides criminal defendants with the opportunity to avoid the risks associated with a trial, reducing the likelihood of conviction on more severe charges. By encouraging the use of plea bargaining, the justice system can alleviate its burden and streamline the adjudication process, ultimately reducing pendency.

The re-engineering of the criminal justice system is imperative to ensure its efficacy in the modern era. Several measures can be implemented to expedite the system's functionality. For instance, plea bargaining, as discussed above, along with mediation and negotiated settlements, can be actively pursued. Additionally, administrative functions can be delegated to court managers, freeing up judicial resources for essential tasks. The use of contemporary management tools and systems for managing dockets and cases can enhance and streamline the operation of the system, while the establishment of human rights cells within state police

[93] Law Commission India, *Reform of judicial administration* (Law Com No 14, 1958)

headquarters, as proposed by the National Human Rights Commission (NHRC) can strengthen accountability and oversight.

Thirdly, Information and Communication Technology (ICT) offers a wealth of opportunities to improve the plight of undertrials. E-courts, a growing trend worldwide, should be embraced wholeheartedly. By leveraging modern science and technology, as discussed in *Justice V.S. Malimath Committee on Reforms of the Criminal Justice System* (2003)[94], criminal investigation and training can be enhanced, thereby benefiting undertrials. By means of the Integrated Services Digital Network (ISDN) technology, courts, and prisons can be linked through video, enabling remote communication and seamless interaction among various criminal justice stakeholders. The provision of video facilities in designated areas within prisons and courtrooms reduces the need for physical prisoner transportation, resulting in significant cost and manpower savings.

The transformation of the justice system is a pressing need in today's world. By embracing innovative alternatives such as plea bargaining and leveraging modern technology through e-courts and ICT, the system can overcome its challenges and improve the plight of undertrials. It is imperative for stakeholders to prioritize these reforms, ensuring a more efficient and just legal framework that benefits both the accused and society as a whole.

Finally, one cannot overstate the importance of prioritizing existing provisions, for example, the regularization of Undertrial and Periodic Review Committees.[95] It is imperative to prevent the plight of destitute undertrial individuals languishing in correctional facilities for protracted periods. Furthermore, establishing comprehensive e-courts in taluks and higher courts, as well as utilizing cutting-edge technology to analyze and categorize pending court cases, are pressing needs that warrant immediate attention. In this context, it becomes evident that fundamental penal reforms are indispensable, necessitating the replacement of the antiquated Prisons Act of 1894. By embracing modern trends in penological thought, we can pave the way for a more enlightened approach to the administration of justice.

[94] Ministry of Home Affairs (n 91)
[95] *Re - Inhuman Conditions in 1382 Prisons* (2016) SC 993

In order to eradicate the inhumanity inflicted upon individuals who, in accordance with the foundational human rights principles, should be presumed innocent until proven guilty, it is of paramount importance to vigilantly adhere to the ultimatum and plan of action set forth by the highest court. This entails meticulous implementation at the district level. Such resolute measures must be taken to ensure that justice is not only served but is also seen to be served. The need to put an end to this profound injustice cannot be overstated.

While the premature release of undertrial prisoners may inadvertently release hardened criminals into society, it is essential to acknowledge that the real, enduring solution lies in an overhaul of the trial process itself. A comprehensive transformation is imperative in the way our criminal justice system operates. This demands a formidable revamping of the existing framework, one that facilitates expeditious investigation and swift trials of criminal cases.

CONCLUSION

It is indeed a startling revelation that less than a third of the individuals incarcerated in Indian penitentiaries are actual convicts. A staggering majority, accounting for approximately 250,000 or 70% of the prison population, consists of undertrials who await the dispensation of justice.[96] The persistence of this predicament can be attributed to profound and systemic flaws deeply ingrained within our criminal justice system.

The foremost constitutional concern arising from the detention of undertrial prisoners lies in its contravention of the principle that prescribes refraining from punishment prior to the establishment of guilt through due legal process. The notion of confining an individual awaiting trial is akin to a premature imposition of punishment, as it deprives them of the benefit of the doubt. Moreover, the absence of segregation between undertrials and convicts within prisons, coupled with similar treatment and provisions, raises doubts about the integrity of the entire justice system.

Notably, there exists a discernible demographic correlation among the undertrial 'victims' in that they predominantly belong to destitute backgrounds, possess limited education, and hail

[96] National Crime Records Bureau (n 4)

from socially marginalized groups. This inadvertently but significantly skews the classification of undertrials, casting doubt on its justifiability. In matters concerning justice, the sole determinant should be the establishment of the accused's culpability beyond a reasonable doubt. Regrettably, it is invariably the indigent who find themselves ensnared in the labyrinthine web of the available 'justice system' for undertrial prisoners.

The aforementioned circumstances shed light on the glaring inadequacies plaguing our criminal justice system, rendering it an emblem of an unjust society. The urgency for reform cannot be overstated. The imperative lies in harmonizing the implementation of existing provisions, establishing technologically advanced e-courts, and embracing modern penological trends. Simultaneously, it is vital to adhere stringently to the highest court's mandate, thereby eliminating the inhumane treatment of undertrial individuals. However, the ultimate solution lies in a comprehensive overhaul of the trial process itself, a transformation that is essential for meeting the demands of justice in our nation. Without such an ambitious overhaul, the attainment of justice and full human rights cooperation will remain just an elusive dream.