

Rights of Undertrial Prisoners in India: A Critical Analysis of the Legal Framework and Judicial Approach

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ABSTRACT

The rights of undertrial prisoners represent one of the most significant indicators of the effectiveness of a constitutional democracy. Although an undertrial prisoner is presumed innocent until proven guilty, a considerable proportion of India's prison population continues to remain incarcerated for prolonged periods awaiting investigation or trial. Over the past four decades, the Supreme Court has progressively expanded the scope of Article 21 of the Constitution by recognizing the rights to speedy trial, legal aid, humane treatment and procedural fairness. Parliament has also strengthened the statutory framework through the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), particularly by introducing provisions intended to reduce unnecessary pre-trial detention. Despite these legal developments, the undertrial crisis persists.

This paper argues that the principal challenge does not lie in the absence of constitutional or statutory protections but in their inconsistent implementation. It critically analyses the gap between legal guarantees and institutional practice by examining constitutional provisions, statutory reforms, judicial precedents and recent policy developments. The paper further evaluates structural issues such as delayed investigations, ineffective legal aid, and socio-economic inequality in bail, judicial backlog and weak institutional accountability. It concludes that meaningful protection of undertrial prisoners requires a shift from merely recognizing rights to ensuring their effective enforcement through coordinated institutional reforms and measurable accountability.

KEYWORDS

Undertrial Prisoners, Article 21, Bail, Speedy Trial, Personal Liberty, Prison Reforms, Criminal Justice.

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INTRODUCTION

The protection of personal liberty is one of the defining features of a constitutional democracy governed by the rule of law. In criminal jurisprudence, this principle assumes special significance for undertrial prisoners, who are detained pending investigation or trial but continue to enjoy the presumption of innocence until their guilt is established by a competent court.² Pre-trial detention is therefore intended to be an exception, justified only where it is necessary to ensure the proper administration of justice, prevent interference with evidence or secure the presence of the accused during trial. It is not designed to function as punishment before conviction.³

Despite these constitutional principles, India continues to face a persistent crisis of prolonged undertrial detention. A substantial majority of prisoners in Indian prisons are undertrials, many of whom remain incarcerated for months or years because of delayed investigations, repeated adjournments, judicial backlog, and inability to satisfy bail conditions or inadequate legal representation.⁴ In several cases, individuals spend longer periods in custody than the maximum sentence prescribed for the alleged offence, while others are ultimately acquitted after enduring years of incarceration. Such situations undermine the constitutional guarantees of liberty, equality and due process and raise serious concerns regarding the fairness of the criminal justice system.⁵

Recognizing these concerns, the Supreme Court of India has consistently interpreted Articles 14, 21 and 22 of the Constitution to protect the rights of undertrial prisoners.⁶ Through landmark judgments such as *Hussainara Khatoon v. State of Bihar*,⁷ *Sunil Batra v. Delhi Administration*⁸ and *D.K. Basu v. State of West Bengal*,⁹ the Court recognised speedy trial, legal aid, humane treatment and procedural fairness as integral components of the right to life and personal liberty. More recently, legislative reforms introduced through the Bharatiya Nagarik

² Universal Declaration of Human Rights art. 11(1), G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 14(2), Dec. 16, 1966, 999 U.N.T.S. 171.

³ INDIA CONST. arts. 21, 22.

⁴ National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs, Government of India, 2026), <https://www.ncrb.gov.in/uploads/files/PSI-2024ason26022026.pdf>.

⁵ INDIA CONST. arts. 14 & 21.

⁶ INDIA CONST. arts. 14, 21 & 22.

⁷ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁸ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

Suraksha Sanhita, 2023 seek to reduce unnecessary detention by strengthening provisions relating to the release of eligible undertrial prisoners.¹⁰

However, the persistence of overcrowded prisons and prolonged incarceration despite progressive judicial and legislative interventions raises an important question: Does India's undertrial crisis arise from inadequate legal protection, or from the failure to implement existing safeguards effectively? This paper argues that the problem is not the absence of rights but the absence of institutional accountability. Constitutional guarantees have expanded considerably, yet their practical enforcement remains inconsistent due to systemic deficiencies within investigation, prosecution, and prison administration and trial management.

Accordingly, this paper adopts a critical approach rather than a purely descriptive one. It evaluates whether constitutional jurisprudence has translated into meaningful institutional reform, examines the effectiveness of recent statutory changes under the BNSS, and identifies the structural weaknesses that continue to undermine the rights of undertrial prisoners. By focusing on the gap between constitutional promise and institutional reality, the paper seeks to contribute to the broader discourse on criminal justice reform in India.

CONSTITUTIONAL AND STATUTORY FRAMEWORK: RIGHTS ON PAPER AND THEIR PRACTICAL LIMITATIONS

The rights of undertrial prisoners in India are primarily derived from the Constitution rather than from a separate comprehensive legislation governing pre-trial detention. Although an accused person is deprived of physical liberty through judicial custody, such detention does not extinguish fundamental rights. The Supreme Court has consistently held that imprisonment restricts only those rights necessarily curtailed by law, while all other constitutional protections continue to remain available to prisoners.¹¹

Article 21 forms the cornerstone of prisoners' rights jurisprudence. Initially interpreted narrowly, its scope expanded significantly after *Maneka Gandhi v. Union of India*, where the Supreme Court held that any procedure depriving a person of liberty must be just, fair and reasonable.¹² This interpretation transformed Article 21 into a source of several derivative

¹⁰ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479 (India).

¹¹ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

¹² Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

rights, including the right to a speedy trial, free legal aid, humane treatment and protection against arbitrary detention.¹³ For undertrial prisoners, this means that prolonged incarceration without justification is not merely an administrative problem but a constitutional concern.

Article 14 complements Article 21 by guaranteeing equality before the law and equal protection of the laws.¹⁴ While the legal framework applies equally to all accused persons, access to justice often depends upon socio-economic status. An accused with financial resources can secure competent legal representation, arrange sureties and pursue bail more effectively than an indigent prisoner. Consequently, constitutional equality frequently remains formal rather than substantive, raising concerns about whether the criminal justice system protects liberty equally for all sections of society.

Article 22 provides procedural safeguards against arbitrary arrest by requiring that every arrested person be informed of the grounds of arrest, be allowed to consult a legal practitioner of their choice and be produced before a Magistrate within twenty-four hours.¹⁵ These protections ensure judicial oversight at the initial stage of detention. However, Article 22 offers limited safeguards against prolonged judicial custody after remand, making the effective enforcement of Article 21 and statutory bail provisions even more significant.

The statutory framework has recently undergone significant reform through the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure.¹⁶ One of its most notable provisions is Section 479, which aims to prevent indefinite detention by permitting the release of eligible undertrial prisoners who have undergone the prescribed portion of the maximum sentence for the alleged offence.¹⁷ The provision reflects legislative recognition that pre-trial detention should not become punitive merely because criminal proceedings remain pending.

Nevertheless, the effectiveness of Section 479 depends largely upon implementation. Its successful operation requires accurate prison records, timely identification of eligible prisoners, effective coordination between prisons and courts, and proactive legal assistance. If

¹³ INDIA CONST. art. 21.

¹⁴ INDIA CONST. art. 14.

¹⁵ INDIA CONST. art. 22.

¹⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).

¹⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479 (India).

these institutional mechanisms fail, the statutory safeguard remains ineffective despite its progressive intent.¹⁸

Another important development is the Model Prisons and Correctional Services Act, 2023, which seeks to modernize prison administration by emphasizing rehabilitation, legal aid, healthcare and human dignity.¹⁹ However, being a model law, its implementation depends upon adoption by individual States. As a result, standards of prison administration and protection of prisoners' rights continue to vary across the country.

Thus, the constitutional and statutory framework governing undertrial prisoners is neither inadequate nor outdated in principle. The challenge lies in ensuring that these legal guarantees are translated into consistent institutional practice. The continuing crisis of prolonged undertrial detention therefore reflects less a failure of law than a failure of governance.

JUDICIAL APPROACH TOWARDS THE RIGHTS OF UNDERTRIAL PRISONERS

The Supreme Court has been the principal architect of prisoners' rights in India. In the absence of detailed legislative safeguards, judicial interpretation has expanded constitutional protections and transformed Article 21 into a powerful instrument for safeguarding the dignity and liberty of undertrial prisoners.²⁰ However, while judicial activism has significantly strengthened legal doctrine, its impact on ground-level implementation remains limited.

The foundation of modern prison jurisprudence was laid in *Sunil Batra v. Delhi Administration*, where the Supreme Court rejected the colonial notion that prisoners lose their fundamental rights upon incarceration.²¹ The Court held that imprisonment restricts liberty only to the extent authorized by law and that prison authorities remain subject to constitutional scrutiny. This decision shifted Indian prison jurisprudence from a custodial approach to a rights-based framework grounded in human dignity.

¹⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479 (India).

¹⁹ Model Prisons and Correctional Services Act, 2023 (Model Act), Ministry of Home Affairs, Government of India.

²⁰ INDIA CONST. art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²¹ *Id.* at 8.

A year later, the landmark judgment in *Hussainara Khatoon v. State of Bihar* exposed the plight of thousands of undertrial prisoners who had remained in custody for years without trial.²² Recognizing this as a grave violation of Article 21, the Court declared the right to speedy trial to be a fundamental right. The judgment also highlighted the importance of legal aid and directed governments to take measures to reduce unnecessary detention. Despite its transformative significance, similar cases continue to reach constitutional courts even today, demonstrating that judicial recognition has not eliminated systemic delays.

The Court further expanded the protection of undertrial prisoners in *Sheela Barse v. State of Maharashtra*, emphasizing the need for legal assistance, humane treatment and protection of vulnerable prisoners, particularly women.²³ Similarly, *D.K. Basu v. State of West Bengal* introduced detailed safeguards governing arrest and detention to prevent custodial abuse and ensure transparency in police procedures.²⁴

These judgments collectively established that the State's constitutional responsibility extends beyond lawful arrest to the entire criminal justice process, including investigation, detention and trial.²⁵ They also reinforced the principle that "bail is the rule and jail is the exception," reflecting the constitutional presumption of innocence.²⁶

However, judicial intervention has inherent limitations. Courts can recognize rights and issue directions, but they cannot continuously supervise every police station, prison or trial court in the country. Consequently, repeated judicial pronouncements have often produced strong constitutional doctrine without corresponding institutional reform.

The evolution of judicial jurisprudence therefore presents a paradox. The Supreme Court has progressively expanded the rights of undertrial prisoners, yet prolonged detention, prison overcrowding and unequal access to justice continue to persist. This suggests that the contemporary challenge is no longer the absence of judicial protection but the inability of criminal justice institutions to implement those protections effectively.

²² *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

²³ *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96.

²⁴ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²⁵ INDIA CONST. arts. 21 & 22.

²⁶ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

CRITICAL ANALYSIS: WHY DO UNDERTRIAL RIGHTS CONTINUE TO FAIL?

Despite an extensive constitutional framework and decades of progressive judicial intervention, the condition of undertrial prisoners in India remains a persistent concern. The problem is not merely legal but structural. While constitutional rights have expanded considerably through judicial interpretation, their practical enforcement continues to depend upon institutional efficiency, administrative coordination and economic accessibility. Consequently, the protection of undertrial prisoners is often determined less by constitutional guarantees than by the functioning of the criminal justice system.

Has Article 21 Become a Paper Right?

The Supreme Court has repeatedly held that the right to life and personal liberty under Article 21 includes the right to a speedy trial, free legal aid and fair procedure.²⁷ However, the recurring problem of prolonged undertrial detention raises an uncomfortable constitutional question: *Can A Right Be Regarded as Meaningful If Its Violation Has Become Routine?*

More than four decades after *Hussainara Khatoon*, courts continue to deal with prisoners who have spent years in custody without the conclusion of their trials. This recurring pattern suggests that judicial recognition alone cannot guarantee constitutional compliance. A fundamental right must exist not only in constitutional doctrine but also in administrative practice. Otherwise, Article 21 risks becoming a “paper right”, legally recognized but practically inaccessible.

Poverty as a Constitutional Barrier to Bail

Indian courts have consistently emphasized that bail is the rule and jail is the exception.²⁸ In practice, however, the ability to secure bail often depends on financial capacity rather than legal entitlement.

²⁷ INDIA CONST. art. 21; *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81; *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.

²⁸ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308; *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240.

An economically privileged accused can arrange competent legal representation, furnish sureties and approach higher courts whenever necessary. By contrast, an indigent accused may remain in custody despite being legally eligible for release simply because they cannot fulfil procedural requirements. Thus, prolonged detention often reflects poverty rather than the seriousness of the alleged offence.

This exposes a deeper constitutional issue. While the law is facially neutral, its operation disproportionately affects economically weaker persons. Equality before the law under Article 14 therefore becomes formal rather than substantive. Unless bail procedures account for economic realities, the criminal justice system risks treating poverty as an indirect ground for continued imprisonment.

Section 479 BNSS: A Progressive Reform or Delayed Relief?

Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 represents a significant legislative attempt to reduce prolonged undertrial detention by permitting the release of eligible prisoners after they have undergone the prescribed portion of the maximum sentence.²⁹ However, the provision raises an important conceptual question: Does It Prevent Excessive Detention, Or Does It Merely Provide Relief After Excessive Detention Has Already Occurred?

A prisoner becomes eligible for release only after spending a substantial period in custody. If investigations and trials remain unnecessarily delayed, Section 479 functions as a corrective mechanism rather than a preventive safeguard. Moreover, its implementation depends upon prison authorities correctly identifying eligible prisoners and placing their cases before the courts. Without effective monitoring, the statutory protection may remain underutilized. Therefore, although Section 479 is a progressive reform, its long-term success will depend upon efficient implementation and regular judicial supervision rather than legislative drafting alone.

Judicial Activism without Administrative Accountability

The Supreme Court has undoubtedly transformed prison jurisprudence through progressive constitutional interpretation. Nevertheless, courts cannot themselves investigate offences,

²⁹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479 (India).

manage prisons or conduct criminal trials.³⁰ These responsibilities lie with executive institutions.

The absence of a coordinated accountability framework means that delays are frequently attributed to multiple causes, including incomplete investigations, shortage of judges, forensic delays, repeated adjournments and inadequate legal aid. While each institution performs a distinct role, none bears direct responsibility for prolonged incarceration. Consequently, constitutional violations often occur without identifiable institutional accountability.

This demonstrates that judicial activism, although essential, cannot by itself resolve systemic deficiencies. Sustainable reform requires executive efficiency and administrative accountability in addition to constitutional adjudication.

Prison Overcrowding: Cause or Consequence?

Prison overcrowding is commonly identified as the principal challenge affecting undertrial prisoners. However, treating overcrowding as the primary problem overlooks its underlying causes.³¹ Overcrowding is largely the result of unnecessary arrests, delayed investigations, prolonged trials, restrictive bail practices and inadequate institutional coordination. Building additional prisons may temporarily reduce congestion, but it does not address the structural deficiencies responsible for excessive detention.

Accordingly, prison overcrowding should be understood as a symptom of deeper failures within the criminal justice system rather than the disease itself. Effective reform must therefore focus on reducing unnecessary incarceration rather than merely expanding prison infrastructure.

CRITICAL OBSERVATION

The analysis demonstrates that India's undertrial crisis cannot be attributed to a lack of constitutional rights or judicial concern. Instead, it reflects a persistent implementation deficit characterized by institutional fragmentation, economic inequality and inadequate accountability. Unless criminal justice institutions are held responsible for enforcing

³⁰ *Id.* at 8.

³¹ *Id.* at 3.

constitutional guarantees, legislative reforms and judicial pronouncements alone will remain insufficient to protect the liberty of undertrial prisoners.

RECOMMENDATIONS

The continued predominance of undertrial prisoners in Indian prisons indicates that legal reforms must be complemented by effective institutional changes. The following measures may significantly improve the protection of undertrial prisoners' rights:

Strengthening the Implementation of Section 479 BNSS

The benefit of Section 479 should not depend solely on applications filed by prisoners or their lawyers. Prison authorities should maintain updated digital records of every undertrial and automatically place eligible cases before the concerned courts. This would minimize unnecessary detention caused by administrative oversight.³²

Reforming Bail Practices

Courts should adopt a more liberal and individualized approach while deciding bail applications, particularly for economically weaker accused. Greater use of personal bonds, simplified surety requirements and legal aid at the remand stage would reduce detention based solely on financial incapacity rather than genuine risks to the administration of justice.³³

Improving Institutional Coordination

The police, prosecution, prison authorities, forensic laboratories and Legal Services Authorities should function through an integrated digital platform that tracks the progress of every undertrial case. Such coordination would help identify delays at an early stage and ensure timely intervention before constitutional rights are violated.

Enhancing Accountability

Periodic review of undertrial cases should be supported by measurable performance indicators. Institutions responsible for prolonged investigations or repeated procedural delays should be

³² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 479 (India).

³³ State of Rajasthan v. Balchand, (1977) 4 SCC 308.

required to record reasons and remain accountable for avoidable violations of Article 21.³⁴ Constitutional rights can be effectively protected only when corresponding institutional responsibilities are clearly defined.

Recognizing Compensation for Unjustified Prolonged Detention

India should consider developing a statutory framework for compensation in cases where an undertrial prisoner suffers prolonged incarceration because of unreasonable delay and is subsequently acquitted. Such a mechanism would reinforce the constitutional value of personal liberty and encourage greater institutional accountability.³⁵

CONCLUSION

The rights of undertrial prisoners represent one of the most important tests of India's constitutional commitment to liberty and the rule of law. Through Articles 14, 21 and 22, as well as progressive judicial interpretation, the Constitution guarantees procedural fairness, dignity and protection against arbitrary detention. Legislative reforms introduced through the Bharatiya Nagarik Suraksha Sanhita, 2023 further demonstrate Parliament's recognition of the need to reduce unnecessary pre-trial incarceration.

However, this study demonstrates that the primary challenge lies not in the absence of legal safeguards but in their inconsistent implementation. Delayed investigations, judicial backlog, and inadequate legal aid, economic inequality in bail practices and weak institutional coordination continue to undermine the effective protection of undertrial prisoners. Consequently, constitutional guarantees frequently remain theoretical rather than practical.

The study therefore concludes that meaningful reform requires a shift from rights recognition to rights enforcement. Judicial activism has laid a strong constitutional foundation, but sustainable protection of undertrial prisoners ultimately depends upon accountable institutions, efficient criminal justice administration and effective implementation of existing legal safeguards. Unless these structural deficiencies are addressed, the constitutional presumption of innocence will continue to remain stronger in legal doctrine than in everyday reality.

³⁴ INDIA CONST. art. 21.

³⁵ Rudal Shah v. State of Bihar, (1983) 4 SCC 141.