



## Rights of undertrial prisoners in the present scenario

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### Abstract

Undertrial inmates form a substantial majority of India's prison population, which reflects deep-rooted problems of prolonged pre-trial detention and systemic delay in the criminal process. Their continued custody frequently erodes key constitutional guarantees under Articles 14, 21, 22 and 39A

of the Constitution, particularly the rights to equality, personal liberty, due process and legal aid. Despite repeated interventions by the higher judiciary and various policy measures, structural factors such as poverty, overcrowded prisons and poor legal awareness still hinder access to justice for this group. Recent legal changes, notably Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which relaxes bail norms for first-time offenders, represent an important attempt to make the criminal justice system more humane. This paper examines the constitutional and statutory framework relating to undertrial prisoners, identifies continuing gaps, and evaluates emerging reforms and future strategies for ensuring prompt, fair and dignified treatment of undertrials.

**Keywords:** Undertrial prisoners; Pre-trial detention; Constitutional rights; Access to justice; Prison overcrowding; Bail reforms; BNSS 2023

### Introduction

Undertrial prisoners, who have not yet been convicted by a court, now account for nearly three-fourths of all inmates in Indian prisons, highlighting a serious imbalance between the presumption of innocence and the reality of incarceration. Many of these individuals remain behind bars for extended periods not because a court has found them guilty, but because of slow investigations, congested court dockets, financial inability to secure bail or lack of effective legal assistance. Against this backdrop, the rights of undertrial prisoners assume special significance for evaluating the health of India's criminal justice system and its adherence to constitutional values.

### Constitutional Foundations

qframework for persons facing criminal proceedings. Article 21, which guarantees the right to life and personal liberty, has been interpreted by the Supreme Court to cover the right to a speedy trial, protection from inhuman or degrading treatment in custody and access to legal assistance. In the landmark series of decisions in Hussainara Khatoon v. State of Bihar, the Court held that detaining an accused person for years without effective trial infringes Article 21, thereby elevating speedy trial to the status of a fundamental right. Article 22 further mandates safeguards at the stage of arrest, such as prompt communication of arrest grounds, production before a magistrate within twenty-four hours and the right to consult a lawyer. Article 39A directs the State to provide free legal aid to ensure that poverty does not become a barrier to justice, a mandate implemented through statutory legal services authorities. Article 14, with its guarantee of equality before law and equal protection of laws, requires that similarly placed accused persons are treated alike and that detention decisions are not arbitrary or discriminatory. Read together, these provisions form the constitutional bedrock of undertrial prisoners' rights.

### Statutory Protections and Recent Reforms

In addition to constitutional guarantees, several statutory measures structure the protection of undertrial prisoners. Section 479 of the BNSS, 2023, which replaces Section 436A of the Code of Criminal Procedure, creates a detailed framework for the release of undertrials on bail once they have remained in custody for a significant portion of the maximum possible sentence. Under this provision, an undertrial accused of an offence not punishable with death or life imprisonment is generally entitled to be considered for release after having spent half of the maximum prescribed term in detention, subject to limited exceptions.

A key innovation is the more lenient rule for first-time offenders: persons with no prior convictions facing non-capital offences may seek release after serving one-third of the maximum sentence. The Supreme Court has clarified that Section 479 applies retrospectively, allowing undertrials detained in cases instituted before the BNSS came into force to also benefit from these liberalised bail norms.

Parallel to these changes, the Model Prison Manual, 2016 and the Model Prisons and Correctional Services Act, 2023 issued by the Ministry of Home Affairs provide guidance to states on the humane management of prisons and lay down specific standards relating to segregation of undertrials from convicts, living conditions, health care, legal access and oversight. The 2023 Model Act reinforces a correctional and rehabilitative approach, recognizing that undertrials enjoy the presumption of innocence until proven guilty.

### Key Rights of Undertrial Prisoners in Practice Right to Speedy Trial

Delays at the stages of investigation, filing of charge-sheet and conduct of trial are the principal reasons why undertrials remain incarcerated for long durations. Judicial pronouncements have repeatedly emphasized that where delay is not attributable to the accused; it may justify release on bail or even quashing of proceedings in extreme cases, as protracted detention without progress offends Article 21.

### Right to Legal Aid and Representation

Article 39A has been operationalised through the Legal Services Authorities Act, 1987, under which the National Legal Services Authority (NALSA), State Legal Services Authorities and District Legal Services Authorities coordinate provision of free legal aid to indigent accused at all stages of the criminal process. Panel lawyers and paralegal volunteers are deployed to assist undertrials in filing bail applications, securing copies of documents and understanding the progress of their cases.

### Right to Dignity and Humane Conditions

Courts have held that routine use of handcuffs, solitary confinement or degrading treatment of undertrials is inconsistent with constitutional guarantees of dignity and humane treatment. Prison rules and manuals generally require that undertrials be provided adequate clothing, food, clean living space, medical care and access to sanitation, and that they are not subjected to harsher restrictions than necessary for security.

### Right to Bail and Fair Consideration

The law of bail is grounded in the principle that pre-trial detention is an exception, not the rule, and that the main purpose of bail is to ensure the accused's presence during trial rather than to impose punishment in advance of conviction. Courts have been encouraged, especially by recent Supreme Court decisions, to adopt a liberal approach in bail matters for non-violent and first-time offenders and to give weight to factors such as length of custody, likelihood of delay and socio-economic circumstances.

### Right to Communication and Visits

Rules in most states allow undertrials to correspond with family members and meet relatives and lawyers, subject to reasonable security regulations. Maintaining contact with family and legal counsel is viewed as essential for the mental health of prisoners and for enabling meaningful participation in their defence.

### Challenges and Ground Realities

Despite a wide-ranging legal framework, there remains a sharp contrast between law on paper and conditions on the ground. Recent official figures indicate that more than 70% of inmates in Indian prisons are undertrials, and many facilities record occupancy rates well above sanctioned capacity, sometimes exceeding 130%. Overcrowding contributes to poor hygiene, spread of communicable diseases, violence and mental distress among prisoners.

Economic vulnerability strongly shapes detention patterns: a large number of undertrials are unable to furnish monetary bail or secure sureties, particularly those from Scheduled Castes, Scheduled Tribes, minorities and other marginalised communities. While NALSA and related bodies have expanded their activities, deficiencies in manpower, training and awareness mean that many prisoners remain ignorant of their entitlements under Section 479 BNSS or existing bail jurisprudence.

Although the Supreme Court and the Ministry of Home Affairs have called for regular meetings of Undertrial Review Committees (URCs) in every district to identify and recommend eligible cases for release, implementation is uneven across states. Some jurisdictions have adopted e-prisons and integrated databases to track custody periods and flag cases, but technological and administrative bottlenecks limit their reach.

### Policy Developments and Institutional Initiatives

In the past few years, both the Union government and the higher judiciary have initiated measures to tackle chronic problems faced by undertrial prisoners. The Model Prisons and Correctional Services Act, 2023, circulated to states for adoption, advocates a comprehensive approach to prison management, including classification of inmates, compulsory URCs, welfare measures and reformation-oriented programmes for all categories of prisoners, including undertrials.

Under the e-Courts Project (Phase III), courts across the country are increasingly equipped for virtual hearings, particularly in bail matters, thereby reducing delays caused by production of undertrials from distant jails and minimising security and transport costs. Fast-track special courts and periodic Lok Adalats are being used to dispose of petty cases and compoundable offences more swiftly to prevent unnecessary detention.

The Ministry of Home Affairs has issued advisories to state governments to proactively identify undertrials who qualify for benefit under Section 479 BNSS and to make use of URCs and digital tools to curb overcrowding. Legal services institutions periodically organise legal literacy camps inside prisons to inform inmates about recent changes in the law and their rights in relation to bail, plea bargaining and legal aid.

### Pathways Forward

Even with incremental reforms, significant work remains to align the treatment of undertrial prisoners with constitutional promises and international standards such as the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Certain steps could meaningfully transform the current situation:

**Time-bound investigations and trials:** Statutorily prescribed timelines for investigation and disposal of non-serious offences, supported by digital documentation and use of video conferencing, can reduce avoidable delays.

**Non-custodial alternatives:** Wider use of probation, community service, supervised release and structured plea bargaining for minor offences can limit reliance on pre-trial incarceration.

**Integrated data systems:** Linking police, court and prison databases so that software automatically flags undertrials who qualify under Section 479 BNSS or other release criteria for early judicial consideration.

**Strengthened legal aid:** Enhancing the capacity of legal services authorities through full-time prison legal clinics, regular visits by paralegals and performance monitoring of panel lawyers.

**Judicial oversight and accountability:** Periodic reviews by High Courts and district judges of long-pending undertrial cases, together with reasoned orders whenever custody exceeds statutory or constitutionally tolerable limits.

### Conclusion

The status of undertrial prisoners offers a direct measure of how faithfully a criminal justice system respects the presumption of innocence and the constitutional commitment to dignity and liberty. India has developed a

fairly advanced legal architecture—through Articles 14, 21, 22 and 39A, Section 479 BNSS, prison manuals and judicial precedents—to protect the rights of those awaiting trial. Yet, ongoing issues of overcrowding, socio-economic inequality, delay and patchy implementation reveal a persistent gap between normative standards and lived realities.

Reforms such as liberalised bail, undertrial review mechanisms and technology-enabled court processes indicate a move in the right direction, but their success will depend on political commitment, adequate resources and sustained monitoring. Ensuring that no person is detained longer than necessary, and that every undertrial is treated with fairness and humanity, is not only a constitutional requirement but also a moral responsibility of the State.

## References

1. National Crime Records Bureau. Prison Statistics India Ministry of Home Affairs, Government of India, 2023.
2. Drishti IAS. “State of Undertrial Prisoners in India.” 28 November, 2024.
3. Tarun IAS. “Undertrial Prisoners in India: NCRB Data, Challenges and Reforms.” 27 August, 2025.
4. Drishti Judiciary. “Section 479 BNSS.” 7 July, 2024.
5. Bar and Bench. “Analysing the Remedy of Bail under Section 479 of BNSS.” 1 October 2024.
6. Bar and Bench. “Supreme Court Grants Section 479 BNSS Benefit to Undertrials in Cases Registered Before July 1, 2024.” 3 September 2024.
7. Hussainara Khatoon Ors v. State of Bihar, 1979 AIR 1369 (SC). See also Testbook, “Hussainara Khatoon vs State of Bihar (1979) – Case Analysis,” 31 July 2025.
8. Ministry of Home Affairs. Model Prison Manual 2016. Women Safety Division, Government of India.
9. Ministry of Home Affairs. Model Prisons and Correctional Services Act, (circulated 2024). Government of India, 2023.
10. Commonwealth Human Rights Initiative. “Undertrial Review Committees.” 2015.
11. PIB, Ministry of Home Affairs. “Prison Reforms.” Press Release, 26 November 2024.
12. Vision IAS. “Prison Reforms.” Monthly Current Affairs – Polity Governance, November 2025.
13. Research Hub. “Undertrial Prisoners in India: Legal Framework, Challenges and Reforms.” Research Article PDF.
14. IJLLR. “Prison Reforms Undertrial Rights: Analysing the Plight of Prisoners in the Indian Criminal Justice System.” 6 June 2025.
15. Christ University Law Journal. “Prisoners’ Rights in India: A Human Rights Perspective.”
16. NUALS Law Journal. “Retrospective Application of Section 479 BNSS: A Crucial Step Forward in Alleviating Prison Overcrowding.” 12 November 2024.
17. United Nations General Assembly. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Resolution A/RES/70/175, 2015.
18. Constitutional Law of India D D Basu
19. BNSS Bhadu