
JUSTICE DELAYED, LIBERTY DENIED: BAIL, DELAY, AND UNDERTRIAL PRISONERS IN ASSAM

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ABSTRACT

The problem of prolonged undertrial detention continues to plague India's criminal justice system, with Assam reflecting the crisis in an acute form. Judicial delays, manifested through a low judge-to-population ratio, prolonged police investigations, delayed filing of charge sheets, and irregular production of undertrial prisoners (UTPs) in courts, remain a primary cause of such detention. The ineffectiveness of the bail system further compounds the crisis: while courts may grant bail, stringent financial conditions, high surety requirements, and the socio-economic vulnerabilities of prisoners render such relief practically inaccessible. Together, these structural and procedural deficiencies contribute significantly to overcrowding in Assam's central and district jails and perpetuate the violation of prisoners' fundamental right to liberty under Article 21 of the Constitution. Statutory safeguards, notably Section 479 of the Bharatiya Nagarik Suraksha Sanhita (corresponding to Section 436A of the Code of Criminal Procedure), mandate release of UTPs after detention equalling half the maximum prescribed sentence. Similarly, the establishment of Undertrial Review Committees (UTRCs) pursuant to Supreme Court directions and NALSA guidelines was intended to provide regular oversight of UTP cases. However, the doctrinal analysis undertaken in this study reveals that the implementation of these safeguards in Assam has been sporadic and ineffective. While judicial pronouncements reaffirm the principle of speedy trial, the gap between legal ideals and ground reality persists, particularly in states like Assam with limited judicial infrastructure and pronounced socio-economic inequality. This paper adopts a doctrinal methodology, analysing statutes, constitutional provisions, judicial decisions, Law Commission reports, and prison statistics to critically evaluate the factors underlying prolonged undertrial detention in Assam. It further undertakes a comparative perspective by examining practices in other states and identifies lessons applicable to Assam. The study concludes with concrete recommendations aimed at strengthening judicial capacity, rationalising bail conditions, and revitalising UTRCs to ensure that the statutory and constitutional promise of liberty is not rendered illusory for undertrial prisoners.

Keywords: Undertrial Prisoners; Judicial Delay; Bail System; Section 479 BNSS; Section 436A CrPC; Undertrial Review Committees (UTRCs); Prison Overcrowding; Assam; Doctrinal Research; Right to Liberty; Speedy Trial.

Introduction

The issue of prolonged undertrial detention has emerged as one of the most pressing challenges facing India's criminal justice system, and Assam reflects this problem in its most acute form. Undertrial prisoners (UTPs), who have not been convicted and therefore continue to enjoy the presumption of innocence, often spend years in prison awaiting the conclusion of investigation, framing of charges, or completion of trial. This not only undermines the constitutional guarantee of personal liberty under Article 21 but also erodes faith in the criminal justice process.¹ The crisis assumes greater significance in Assam, a state marked by socio-economic vulnerabilities, uneven development of judicial infrastructure, and an overburdened justice delivery system.

Judicial delay lies at the heart of the problem. A low judge-to-population ratio, coupled with large numbers of vacancies in both the subordinate judiciary and the Gauhati High Court, contributes to the mounting pendency of cases. Procedural bottlenecks, such as delayed police investigations, prolonged filing of charge sheets, and irregular production of UTPs due to logistical constraints, further exacerbate the delay.² The cumulative effect is that individuals accused of minor or bailable offences often remain incarcerated for longer periods than the maximum punishment prescribed for such offences. Alongside judicial delay, the ineffectiveness of the bail system compounds the plight of UTPs. Although bail is a statutory right in bailable offences and a matter of judicial discretion in non-bailable cases, the socio-economic reality of Assam reveals that many prisoners are unable to furnish sureties or pay the amounts stipulated by courts.³ Thus, bail which is intended as an instrument of liberty, becomes illusory for the poor and marginalized, leading to a discriminatory system where wealth dictates freedom while poverty results in incarceration.⁴ The consequence is not merely individual

¹ Bohria Payal and Singh Indra Kumar, 'Prisoners' Right with Reference to Article 21 under the Indian Constitution: An Overview' (2025) 5 International Journal of Civil Law and Legal Research 99.

² Mishra Aryan, 'The Role of Judiciary in Protection of Undertrials' (2005) 5 Indian Journal of Legal Review 601.

³ Aparna Chandra and Keerthana Medarametla, 'Bail and Incarceration: The State of Undertrial Prisoners in India' (24 November 2017) <<https://papers.ssrn.com/abstract=3156129>> accessed 2 October 2025.

⁴ Aachal Sah, 'Bail and Undertrial Inmates: Unveiling the Crisis within the Criminal Justice System' (2023) 6 Issue 4 International Journal of Law Management & Humanities

suffering but also institutional stress, as prisons in Assam continue to remain overcrowded and under-resourced.

In recognition of these challenges, legal and institutional safeguards have been introduced. Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁵ (corresponding to Section 436A of the Code of Criminal Procedure, 1973)⁶, provides for the release of undertrial prisoners who have undergone detention for half of the maximum sentence prescribed for their alleged offence. Similarly, the Supreme Court, through its continuing mandamus in *Hussainara Khatoon v. State of Bihar*⁷ and subsequent cases, has underscored the right to speedy trial as part of Article 21, directing the establishment of Undertrial Review Committees (UTRCs) across districts to periodically review cases of prolonged detention. However, the practical implementation of these safeguards in Assam remains far from satisfactory. UTRCs often meet irregularly, their recommendations lack binding force, and Section 479 BNSS is applied inconsistently, thereby limiting their potential to mitigate the crisis.

This research, adopting a doctrinal methodology, seeks to examine the intersection of judicial delay and the bail system in perpetuating the undertrial crisis in Assam. It critically analyses statutory provisions, constitutional guarantees, and judicial pronouncements, while also considering prison statistics and reports from legal service authorities. The central focus lies in assessing the implementation of Section 479 BNSS and the role of UTRCs in Assam's courts and prisons. By situating Assam's experience within the broader national and comparative context, the study aims to highlight systemic deficiencies and propose workable reforms. Ultimately, the introduction of safeguards in law must not remain a matter of formality but must be translated into practice to ensure that justice is not delayed to the point where it becomes justice denied. In a state like Assam, where socio-economic marginalisation and infrastructural limitations converge, the effective functioning of bail jurisprudence, Section 479 BNSS, and UTRCs is essential not only to protect the rights of prisoners but also to uphold the integrity of the criminal justice system itself.

<<https://heinonline.org/HOL/Page?handle=hein.journals/ijlmhs24&id=1141&div=&collection=>> accessed 2 October 2025.

⁵ Bharatiya Nagarik Suraksha Sanhita, Sec. 479

⁶ Code of Criminal Procedure, 1973, Sec. 436 A

⁷ *Hussainara Khatoon v. State of Bihar* (1979) 3 SCC 532

Statement of the Problem

Despite the constitutional guarantee of a fair and speedy trial, undertrial prisoners (UTPs) in Assam remain incarcerated for prolonged periods due to systemic judicial delays and the ineffective functioning of the bail system. Contributing factors include a low judge-to-population ratio, pendency caused by slow investigations and late filing of charge sheets, irregular production of UTPs in courts, and onerous bail conditions that economically weaker prisoners cannot fulfil. Although Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) (corresponding to Section 436A CrPC) and Undertrial Review Committees (UTRCs) are designed to safeguard the rights of prisoners, their implementation remains sporadic and inadequate. This failure not only worsens overcrowding in Assam's central and district jails but also erodes the constitutional mandate of liberty under Article 21.

Objectives of the Study

This study aims to critically analyse the causes of prolonged undertrial detention in Assam, focusing on judicial delays and the ineffectiveness of the bail system. It examines how systemic issues such as judicial vacancies, delayed investigations, and irregular court production of prisoners contribute to incarceration beyond reasonable limits. At the same time, it evaluates the barriers faced by undertrial prisoners in accessing bail due to onerous surety and financial conditions. The research further assesses the implementation of Section 479 BNSS (corresponding to Section 436A CrPC) and the functioning of Undertrial Review Committees in Assam. The overarching objective is to propose reforms that can reduce detention, alleviate prison overcrowding, and strengthen the constitutional mandate of liberty and speedy trial.

Research Methodology

The present study adopts a doctrinal research methodology, relying primarily on an analytical examination of statutes, constitutional provisions, judicial decisions, policy documents, and authoritative reports. Secondary sources such as Law Commission reports, National Crime Records Bureau (NCRB) statistics, guidelines issued by the National Legal Services Authority (NALSA), and reports of the Assam State Legal Services Authority have been critically reviewed to understand the structural causes of prolonged undertrial detention. Relevant case laws of the Supreme Court and Gauhati High Court have been analysed to trace the evolution of jurisprudence on bail, speedy trial, and undertrial rights. Scholarly articles and commentaries

from reputed journals are also engaged with to provide doctrinal depth and comparative insights. By combining statutory interpretation with judicial analysis and empirical data available through official reports, the research seeks to highlight gaps between legal safeguards such as Section 479 BNSS (436A CrPC) and institutional mechanisms like Undertrial Review Committees, and their actual implementation in Assam's criminal justice system.

Judicial Delays and Structural Barriers

The phenomenon of judicial delay has long been recognised as one of the most critical impediments to the fair administration of criminal justice in India. In Assam, the problem assumes particular gravity given the limited judicial infrastructure, vast geographical spread, and the disproportionate burden on courts relative to their sanctioned strength. Prolonged detention of undertrial prisoners is inextricably linked to these structural deficiencies, which manifest in multiple forms ranging from shortage of judges to procedural lapses in police investigation and logistical constraints in producing prisoners before courts. Together, these factors not only cause severe overcrowding in prisons but also undermine the constitutional guarantee of a speedy trial.

1. Judge-to-Population Ratio and Vacancies in Assam

One of the foremost structural barriers is the chronic shortage of judges. India's judge-to-population ratio has historically remained far below international standards, and Assam is no exception.⁸ The Law Commission of India has, time and again, recommended a minimum ratio of 50 judges per million population, yet the actual strength in Assam is substantially lower.⁹ Vacancies in the Gauhati High Court as well as in the subordinate judiciary continue to remain high, leading to mounting pendency of criminal cases. Reports indicate that the judicial system in India was operating with nearly one-fourth of posts lying vacant as of 2018, and in certain years, vacancy rates in the High Courts reached as high as 40% to 45 %.¹⁰ The subordinate courts in Assam, which bear the primary burden of undertrial cases, have faced similar vacancies, causing an inevitable delay in case progression and timely adjudication. The

⁸ 'Will More Judges Help Reduce Case Backlog? - Supreme Court Observer'

<<https://www.scobserver.in/journal/will-more-judges-help-reduce-case-backlog/>> accessed 2 October 2025.

⁹ 'Only 15 Judges per Million Population in the Country: 2025 India Justice Report - The Economic Times'

<<https://economictimes.indiatimes.com/news/india/only-15-judges-per-million-population-in-the-country-2025-india-justice-report/articleshow/120309565.cms?from=mdr>> accessed 2 October 2025.

¹⁰ 'Understanding Vacancies in the Indian Judiciary' <<https://prsindia.org/theprsblog/understanding-vacancies-in-the-indian-judiciary>> accessed 2 October 2025.

shortage of judicial officers directly translates into prolonged waiting periods for trial, thereby extending the period of incarceration for undertrial prisoners.

2. Delay in Police Investigations and Filing of Charge Sheets

Another structural bottleneck is the delay in investigation and filing of charge sheets by the police. The Bharatiya Nagarik Suraksha Sanhita (previously Code of Criminal Procedure) prescribes specific time limits within which investigations must be completed, failing which the accused becomes entitled to statutory bail.¹¹ However, in Assam, delays in investigation are rampant due to inadequate manpower, lack of forensic and technological support, and inefficiencies in coordination between investigative agencies.¹² As a result, undertrial prisoners often languish in jail for months or even years before the charge sheet is filed, which in turn delays the commencement of trial. Such delays negate the intent of procedural safeguards and burden the judicial system with prolonged pendency. In many cases, the prolonged pre-trial detention exceeds the likely sentence if the accused were to be convicted, raising serious concerns about proportionality and fairness.

3. Irregular Production of Undertrial Prisoners in Courts

The irregular production of undertrial prisoners before courts is yet another contributing factor to delay. The logistical challenges of transporting prisoners from jails to courts, especially in far-flung districts of Assam, coupled with shortage of police escorts, frequently results in adjournments and missed hearings. In several instances, prisoners are not produced even when hearings are scheduled, leading to further stagnation in the progress of trials.¹³ The lack of adequate digital infrastructure, though partially addressed during the Covid-19 pandemic through video-conferencing facilities, continues to limit consistent court appearances.¹⁴ The denial of regular and timely production of undertrial prisoners not only hampers the progress of the case but also infringes upon their right to be heard and to participate meaningfully in

¹¹ Bharatiya Nagarik Suraksha Sanhita, 2023, Sec. 187

¹² 'Acute Shortage of Manpower Hits Forensic Science Laboratory, Assam' <https://www.sentinelassam.com/topheadlines/acute-shortage-of-manpower-hits-forensic-science-laboratory-assam-496935#google_vignette> accessed 2 October 2025.

¹³ Raghavan Vijay, 'Delays in the Criminal Justice Process: Consequences for Undertrial Prisoners and Their Families' <<https://dakshindia.org/Justice-Frustrated/section-two-1.xhtml>> accessed 2 October 2025.

¹⁴ Saqib Nawaz and others, 'Adapting to the New Normal: Understanding the Impact of COVID-19 on Technology Usage and Human Behaviour' (2024) 51 Entertainment Computing 100726 <<https://www.sciencedirect.com/science/article/pii/S1875952124000946>> accessed 2 October 2025.

their defence.

Broader Systemic Consequences

The combined effect of these barriers is devastating. Undertrial prisoners remain incarcerated for inordinate periods, often longer than the prescribed sentence for their alleged offences. This not only results in overcrowding of prisons, straining already fragile facilities, but also erodes the principle of equality before law by disproportionately affecting the poor, marginalised, and illiterate segments of society who are unable to navigate the system or secure timely legal representation.¹⁵ The inefficiencies of the judicial and investigative machinery thus perpetuate a vicious cycle where delay becomes the norm, justice is denied by default, and the constitutional promise of speedy trial remains unfulfilled.

Bail System in Practice

Bail in India is conceived as a constitutional guardrail against unjust pre-trial incarceration: the presumption of innocence, the right to personal liberty under Article 21,¹⁶ and the doctrine that “bail is the rule, jail the exception” animate the framework under the CrPC/BNSS.¹⁷ In practice, however, especially in Assam, the pathway from a bail order to actual release is strewn with structural and procedural hurdles. These frictions convert a paper remedy into an illusory right for indigent, rural, and socially vulnerable undertrial prisoners (UTPs), thereby feeding prison overcrowding and prolonging detention well beyond what is necessary to secure an accused’s presence at trial.

1. Normative framework and first principles

Doctrinally, bailable offences (CrPC s. 436) require release as of right; non-bailable offences are governed by calibrated judicial discretion (ss. 437, 439). Amounts fixed for bonds must be “reasonable” (s. 440), bonds and sureties are regulated (s. 441), and a cash deposit may be permitted in lieu of surety (s. 445). In parallel, two guardrails aim to check unnecessary incarceration: (i) statutory/default bail when investigation overshoots statutory limits (s.

¹⁵ David P Farrington and Christopher P Nuttall, ‘Prison Size, Overcrowding, Prison Violence, and Recidivism’ (1980) 8 Journal of Criminal Justice 221

<<https://www.sciencedirect.com/science/article/abs/pii/0047235280900021>> accessed 2 October 2025.

¹⁶ The Constitution of India, 1950, Art. 21

¹⁷ ‘Bail Is Rule, Jail Is Exception’ <<https://blog.ipleaders.in/bail-is-rule-jail-is-exception/>> accessed 2 October 2025.

167(2)), and (ii) time-capped undertrial release under Section 479 BNSS / 436A CrPC (addressed in the next Part). Supreme Court jurisprudence, from *Gudikanti Narasimhulu*¹⁸ and *Moti Ram*¹⁹ to *Dataram Singh*²⁰, *Sanjay Chandra*²¹, *Arnesh Kumar*²², and *Satender Kumar Antil*²³, requires courts to individualise risk (flight, tampering, reoffending) rather than impose wealth-indexed conditions. This normative architecture, if faithfully implemented, would keep pre-trial custody strictly exceptional.

6.2 High bail amounts, surety hurdles, and “local surety” practices

On the ground, the most visible choke-point is money. Bail amounts are frequently fixed by rote rather than by reasoned assessment of means, offence gravity, and risk. For many UTPs in Assam, daily-wage earners, migrant workers, members of Scheduled Tribes in riverine and hill districts, raising even modest sums is prohibitive.²⁴ Courts and police sometimes insist on multiple “local” sureties with proof of land/revenue records, salary certificates, or tax slips. Verification of sureties is delayed by thinly staffed police stations; re-verifications are triggered when a surety is found outside the district, and “professional surety” fears cause additional scrutiny.²⁵ Although Section 445 allows a deposit in lieu of surety and the proviso to Section 436 envisages release on personal bond for indigent accused, these routes remain under-used. The result is a paradox: bail is granted, yet liberty is denied because the accused cannot cross the final logistical mile.

3. From order to release: the implementation gap

Even after a favourable order, release is not immediate. Certified copies may take time; transmission of release warrants to jails can be delayed; weekend/holiday backlogs at court registries and e-prisons systems defer execution; and escort shortages or transport constraints stall compliance with ancillary conditions (e.g., marking attendance at a remote police

¹⁸ *Gudikanti Narasimhulu And Ors vs Public Prosecutor*, (1978) 1 SCC 240

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

²⁰ *Dataram Singh vs. State of Uttar Pradesh & Anr.*, 2018 (3) SCC 22

²¹ *Sanjay Chandra v. Central Bureau of Investigation*, AIR 2012 SC 830

²² *Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 469

²³ *Satender Kumar Antil vs. Central Bureau of Investigation*, (2022) 10 SCC 51

²⁴ ‘When Bail Becomes a Facade: Punjab & Haryana HC Strikes down Local Surety Condition | CJP’ <<https://cjp.org.in/when-bail-becomes-a-facade-punjab-haryana-hc-strikes-down-local-surety-condition/>> accessed 2 October 2025.

²⁵ ‘Mandating Local Surety For Bail Of Person From Outside State Is “Assault” On His Fundamental Rights: Punjab & Haryana High Court’ <<https://www.livelaw.in/high-court/punjab-and-haryana-high-court/punjab-haryana-high-court-mandating-local-surety-is-assault-on-fundamental-right-individual-of-one-part-of-country-is-treated-differently-304256>> accessed 2 October 2025.

station).²⁶ Where conditions require production of specific documents (residence proof, employer letters), UTPs without stable housing or formal employment remain trapped. Each day of administrative lag translates into unlawful, avoidable detention, yet seldom attracts judicial scrutiny or compensation.

4 Discretion, reasons, and the “cut-and-paste” problem

Assam’s trial courts carry heavy dockets. Bail hearings are constrained by limited time; orders may default to formulaic reasoning, over-weight the seriousness of the charge, or conflate accusation with proof. Adjournments sought by the prosecution for “case diary” production or for victim-impact submissions delay consideration. Discretion, though legally structured, becomes unpredictable across courts and districts, producing similarly situated accused with different outcomes.²⁷ The absence of rigorous, recorded reasons and of periodic review of onerous conditions (travel bans, weekly reporting, surety substitution) further entrenches inequality.

5. Legal aid, timing, and the missed opportunities

Quality and timing of legal aid are decisive. Over-extended legal aid counsel may meet UTPs only at remand or just before the hearing; applications sometimes miss crucial statutory levers, default bail under Section 187 BNSS (Section 167(2) Cr.P.C.),²⁸ the indigency pathway to personal bonds under Section 478 BNSS (Section 436 CrPC)²⁹, cash deposit under Section 490 BNSS (Section 445 CrPC)³⁰, or relaxation/ modification of conditions by higher courts Section 483 BNSS (Section 439 CrPC)³¹. Routine failure to press these levers, compounded by language barriers and low legal awareness among UTPs, keeps the jail population high even in low-gravity offences. Where special statutes (e.g., NDPS, POCSO, UAPA) are involved, additional statutory rigour elevates the threshold, making timely, well-prepared bail strategy even more critical.

²⁶ ‘Delay in Release after Securing Bail’ <<https://www.groundxero.in/2022/05/08/delay-in-release-after-securing-bail/>> accessed 2 October 2025.

²⁷ Sagar Sagar and others, ‘Bail: A Matter of Right or Discretion in the Criminal Justice System in India’ [2022] International journal of health sciences 13646.

²⁸ Bharatiya Nagarik Suraksha Sanhita, Sec. 187

²⁹ Bharatiya Nagarik Suraksha Sanhita, Sec. 478

³⁰ Bharatiya Nagarik Suraksha Sanhita, Sec. 490

³¹ Bharatiya Nagarik Suraksha Sanhita, Sec. 483

6. Compliance burdens and the risk of re-incarceration

Post-release, compliance with conditions can be onerous: weekly reporting at far-off police stations, prohibitions on entering one's own employment area, or surety "renewal" on transfer/migration. Non-compliance, often due to poverty, distance, floods, or lack of transport, invites cancellation proceedings, creating a revolving door between jail and conditional liberty. In Assam's geography, seasonal disruptions (monsoon, river crossings) and scattered habitations magnify these compliance costs for the poorest.

7. Systemic effects: overcrowding and coercive plea dynamics

The cumulative effect is predictable: more UTPs, longer stays, and overcrowded jails. As detention lengthens, accused persons, especially in petty cases, face pressure to plead guilty or compound simply to exit incarceration, irrespective of the merits.³² Prolonged pre-trial custody erodes the defence (witnesses disperse, employment is lost, families incur debt), distorts bargaining power, and corrodes the presumption of innocence.

A credible bail system in Assam requires (i) reasoned, means-sensitive bail orders that record ability-to-pay and avoid wealth-indexed conditions; (ii) greater use of personal bonds for indigent accused and cash deposits in lieu of sureties; (iii) time-bound surety verification protocols with digital templates and police accountability; (iv) Bail Assistance Units under DLSA/UTRCs to help identify sureties, arrange documents, and track release execution; (v) standardised bail-order formats that flag statutory triggers (s. 167(2), s. 436 proviso) and set clear, proportionate reporting conditions; (vi) video-enabled bond execution and e-transmission of release warrants to jails; (vii) periodic condition-review (with an explicit presumption to relax or substitute onerous terms after a fixed compliance period); and (viii) strict adherence to *Arnesh Kumar* and *Satender Kumar Antil* to reduce unnecessary arrests and convert more cases to summons/notice regimes. Therefore, while the law's text is liberty-protective, its day-to-day practice in Assam often imposes financial and logistical tolls that the poorest cannot pay. Unless courts, police, prisons, and legal services institutions align around means-tested, reasoned, and promptly executable bail, the promise of bail will remain nominal, and undertrial detention, and with it, overcrowding will persist.

³² Wayne N Welsh and others, 'Jail Overcrowding: An Analysis of Policy Makers' Perceptions' (1990) 7 Justice Quarterly 341 <<https://www.tandfonline.com/doi/abs/10.1080/07418829000090611>> accessed 2 October 2025.

Section 479 BNSS (436A CrPC): Law and Practice

The introduction of Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS),³³ which corresponds to Section 436A of the Code of Criminal Procedure, 1973 (CrPC),³⁴ represents an attempt by the legislature to directly confront the problem of prolonged undertrial detention. It reflects the constitutional philosophy that no individual should suffer incarceration beyond a reasonable proportion of the maximum punishment prescribed for the alleged offence, especially when trial delays are not attributable to the accused. This provision thus occupies a pivotal place in the discourse on undertrial justice, standing as a statutory manifestation of Article 21's guarantee of personal liberty and the right to a speedy trial.

1. Legislative Intent and Statutory Framework

Section 479 BNSS lays down that any person who has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence may be released on bail by the court. It further provides that such release may be subject to reasonable conditions, and in cases where the offence is punishable with death, life imprisonment, or imprisonment exceeding ten years, the provision may not apply. The legislative intent behind this section is clear: to prevent a situation where an accused languishes in custody for an inordinate time, potentially longer than the sentence they might face if convicted.³⁵ It also creates a check upon systemic inefficiencies, effectively compelling courts and investigating agencies to expedite proceedings.

2. Jurisprudential Backdrop and Judicial Interpretation

Judicial pronouncements have played a critical role in expanding the scope and meaning of this safeguard. In *Hussainara Khatoon v. State of Bihar* (1979),³⁶ the Supreme Court categorically held that the right to speedy trial is integral to Article 21. This principle was later reinforced in *Kadra Pahadiya v. State of Bihar* (1981),³⁷ where the Court emphasised that the detention of undertrials for periods longer than the maximum punishment violates both fairness and reasonableness. In *Bhimsingh v. Union of India* (2015),³⁸ the Supreme Court specifically

³³ Bharatiya Nagarik Suraksha Sanhita, Sec. 479

³⁴ Bharatiya Nagarik Suraksha Sanhita, Sec. 436A

³⁵ Bharatiya Nagarik Suraksha Sanhita, Sec. 479

³⁶ *Hussainara Khatoon v. State of Bihar* (1979) 3 SCC 532

³⁷ *Kadra Pahadiya v. State of Bihar* (1981) 3 SCC 671

³⁸ *Bhimsingh v. Union of India* (2015) 13 SCC 603

directed states to ensure implementation of Section 436A CrPC and ordered the establishment of Undertrial Review Committees (UTRCs) to identify prisoners eligible for release under this provision. More recently, in *Satender Kumar Antil v. CBI* (2022),³⁹ the Court reiterated that arbitrary and prolonged incarceration of undertrials is unconstitutional, highlighting Section 436A as a vital instrument for decongesting prisons. Judicial interpretation has thus not only endorsed but also strengthened the operation of this safeguard. Courts have consistently held that the provision should be construed liberally in favour of liberty, with the presumption tilted towards release unless compelling reasons exist to justify continued detention.

3. Practice and Implementation in Assam

Despite the clarity of legislative intent and judicial reinforcement, the implementation of Section 479 BNSS (436A CrPC) in Assam remains sporadic and inconsistent. Several factors contribute to this gap:

1. **Lack of Systematic Review:** Courts do not routinely monitor the detention period of each undertrial, leaving it to the accused or their counsel to invoke the provision. This places the burden on prisoners, many of whom are illiterate, poor, and unaware of their legal entitlements.
2. **Inadequate Role of Legal Aid:** Though Section 436A is intended to protect indigent prisoners, legal aid counsel often fail to move timely applications for release under this section. This results in eligible prisoners remaining incarcerated for want of representation.
3. **Institutional Inertia:** Prison authorities in Assam are often not proactive in identifying eligible prisoners and placing their cases before courts. While UTRCs were established precisely to address this gap, their functioning has not been sufficiently robust or consistent.
4. **Judicial Reluctance:** In some instances, courts adopt a cautious approach, especially in cases involving serious charges, even when statutory thresholds are met. The apprehension of public backlash or concerns over “letting the accused free” often

³⁹ *Satender Kumar Antil v. CBI* (2022) 10 SCC 51

overshadows the statutory mandate.

5. **Data Deficits:** A major barrier in Assam is the absence of real-time, accessible data on undertrial detention periods. Without digitised prisoner records and regular monitoring, courts often lack the practical tools to implement Section 479 effectively.

4. Consequences of Non-Implementation

The ineffective application of Section 479 BNSS perpetuates overcrowding in Assam's jails. Many undertrial prisoners remain incarcerated well beyond half the maximum punishment for their alleged offences, thereby negating the very rationale of the provision. This not only burdens the prison system but also subjects individuals to irreparable personal and social harm, loss of livelihood, breakdown of families, and stigma of incarceration. The failure to implement the safeguard widens the gap between law in books and law in action, undermining the credibility of both judiciary and legislature.

For Section 479 BNSS to achieve its intended purpose in Assam, systemic reforms are essential. Courts must adopt a proactive role by institutionalising periodic reviews of detention periods during remand hearings. Prison authorities should be mandated to prepare and submit monthly lists of prisoners eligible under this section to both courts and UTRCs. Legal aid services must be strengthened to ensure that every eligible prisoner is represented and their case is brought before the judiciary without delay. Furthermore, digitisation of prison records through integration with e-prisons software can provide real-time data, enabling automatic alerts when a prisoner becomes eligible for release. Finally, judicial training and sensitisation are required to reinforce the idea that Section 479 BNSS is not a matter of judicial indulgence but a statutory right grounded in constitutional liberty. In essence, Section 479 BNSS (436A CrPC) stands as a legislative guarantee against prolonged undertrial detention, but its promise in Assam remains largely unfulfilled. Its effective implementation is crucial not only to reduce overcrowding but also to restore faith in the justice system, ensuring that liberty is not a privilege of the few but a right available to all.

Undertrial Review Committees (UTRCs)

The establishment of Undertrial Review Committees (UTRCs) in every district marks an important institutional attempt to address the persistent crisis of undertrial detention in India.

Conceived as a response to the Supreme Court's continuing concern with prison overcrowding and denial of liberty, UTRCs serve as a mechanism of periodic oversight aimed at identifying cases where prisoners are eligible for release but remain incarcerated due to systemic gaps. In Assam, where undertrial detention constitutes the bulk of the prison population, UTRCs assume special significance.⁴⁰ Yet, their functioning has been uneven, limiting their potential as an instrument of decongestion and justice delivery.

1. Origin and Legal Mandate

The legal foundation of UTRCs can be traced to the Supreme Court's order in *Bhimsingh v. Union of India* (2015)⁴¹, wherein the Court directed the constitution of such committees in every district of the country. The Court observed that large numbers of prisoners continued to remain in custody despite being eligible for release under Section 436A CrPC (now Section 479 BNSS) or other provisions of law. The mandate of these committees was therefore to periodically review the cases of undertrial prisoners, particularly those who had completed half of the maximum punishment prescribed, and to recommend appropriate action for their release.

Pursuant to these directions, the Ministry of Home Affairs issued an advisory in 2015 requiring all States to constitute UTRCs comprising the District Judge (as Chairperson), the District Magistrate, the Superintendent of Police, and the Secretary of the District Legal Services Authority (DLSA).⁴² The National Legal Services Authority (NALSA) further operationalised this framework through detailed guidelines, requiring quarterly meetings of UTRCs to examine cases of undertrials who were:

- eligible for release under Section 436A CrPC,
- accused of bailable offences but unable to furnish bail,
- suffering from serious health conditions, or
- women, juveniles, and other vulnerable groups entitled to special consideration.

⁴⁰ 'Under Trial Prisoner Report | NATIONAL LEGAL SERVICES AUTHORITY (NALSA) | India' <<https://nalsa.gov.in/under-trial-prisoner-report/>> accessed 2 October 2025.

⁴¹ *Bhim Singh v. Union of India* (2015) 13 SCC 603

⁴² 'SC Moves to Get Bail for Poor Undertrials - The Hindu' <<https://www.thehindu.com/news/national/sc-moves-to-get-bail-for-poor-undertrials/article7216803.ece>> accessed 2 October 2025.

2. Structure and Functioning in Assam

In Assam, UTRCs have been constituted in all districts under the supervision of the Assam State Legal Services Authority (ASLSA). Their composition mirrors the national mandate: chaired by the District and Sessions Judge, with the Deputy Commissioner, Superintendent of Police, and Secretary of the District Legal Services Authority as members. The committees are expected to meet once every quarter, review the jail records submitted by prison authorities, and pass recommendations for release or further action.

On paper, the mechanism appears vigorous. In practice, however, several limitations constrain its effectiveness. Meetings are often irregular, sometimes delayed due to administrative priorities of the members. The preparation of lists of eligible prisoners by prison authorities is frequently incomplete, and without digitised jail data, UTRCs rely on manual records that may omit significant cases. Moreover, the recommendations of UTRCs are advisory in nature, requiring follow-up by courts, legal aid lawyers, or district administration. This diffusion of responsibility results in cases slipping through the cracks.

3. Effectiveness and Achievements

Despite these challenges, UTRCs have had some measurable impact in Assam. Periodic reports of the ASLSA indicate that several hundred undertrial prisoners have been recommended for release through this mechanism, particularly those in custody for petty offences or those unable to furnish bail. UTRCs have also contributed to raising awareness within district administrations about the plight of undertrials and the importance of applying Section 479 BNSS. They act as a bridge between prison administration and the judiciary, providing a forum where institutional actors can coordinate to reduce avoidable detention.

However, the scale of intervention remains limited compared to the magnitude of the problem. Assam continues to witness a large percentage of its prison population being undertrials, and many eligible prisoners remain incarcerated despite UTRCs. The committees often focus on easily identifiable cases (such as completion of half the maximum sentence) while overlooking more nuanced categories, such as prisoners in bailable offences languishing due to inability to furnish surety, or those with serious health conditions.

4. Limitations in Practice

Several systemic shortcomings undermine the effectiveness of UTRCs in Assam:

1. **Irregular Meetings:** Though mandated to meet quarterly, many committees do not adhere strictly to this timeline, reducing the frequency of intervention.
2. **Lack of Real-Time Data:** Without digitised, integrated prison records, UTRCs rely on outdated or incomplete lists prepared manually by prison staff.
3. **Advisory Nature of Recommendations:** Since UTRC recommendations are not binding, there is often a gap between recommendation and judicial enforcement.
4. **Limited Legal Aid Involvement:** Though DLSA Secretaries are part of the committees, inadequate follow-up by legal aid lawyers leads to eligible prisoners continuing to remain in jail.
5. **Socio-Economic Blind Spots:** UTRCs have not been effective in addressing cases where bail was granted but prisoners remained inside due to poverty or lack of surety.

For UTRCs to function as effective custodians of undertrial rights in Assam, several reforms are necessary. First, meetings must be held regularly with mandatory compliance reports to the High Court and State Legal Services Authority. Second, the integration of jail data with the e-prisons portal must be expedited, enabling automatic identification of prisoners eligible under Section 479 BNSS and other criteria. Third, the recommendations of UTRCs should be accorded greater legal weight, with a requirement that concerned courts dispose of such recommendations within a fixed timeline. Fourth, the role of legal aid lawyers must be enhanced, with dedicated units established to track UTRC recommendations and file necessary applications for release. Finally, the ambit of UTRC review should be expanded to cover not just Section 479 BNSS cases but also instances of indigent prisoners unable to meet bail conditions, women and juvenile prisoners, and those with pressing health concerns.

Findings and Analysis

The research reveals that the crisis of prolonged undertrial detention in Assam is not the result of a single failing but the cumulative effect of structural, procedural, and socio-economic

barriers that persistently undermine the objectives of criminal justice. The interplay between judicial delays, the ineffectiveness of the bail system, and the weak implementation of statutory safeguards has created a cycle where undertrial prisoners remain incarcerated for years, despite the presumption of innocence and the constitutional guarantee of liberty.

A core finding is that judicial delay remains the most significant driver of prolonged detention. Assam continues to suffer from a low judge-to-population ratio, frequent vacancies, and overburdened dockets. This shortage is compounded by procedural inefficiencies in police investigations and the delayed filing of charge sheets, which in many instances extend beyond statutory limits. The irregular production of undertrial prisoners in court, often due to logistical constraints such as shortage of escorts and transport, further stalls the progress of trials. The cumulative result is that many prisoners spend longer in detention awaiting trial than the sentence they would have received if convicted. This indicates a systemic failure to uphold the principle of speedy trial as mandated under Article 21 and affirmed in *Hussainara Khatoon v. State of Bihar*.

The study finds a wide gap between the theoretical framework of bail and its practical application in Assam. Courts continue to impose high bail amounts or onerous surety requirements that indigent prisoners cannot meet. The insistence on local sureties and documentary proof often excludes those from marginalised backgrounds, especially migrants and daily-wage earners. Even when bail is granted, delays in processing release orders, verifying sureties, and transmitting warrants mean that prisoners remain behind bars for days or weeks longer than necessary. The research shows that the promise of bail as a safeguard against unnecessary detention is, for many, illusory. Liberty is effectively priced, and poverty becomes a determinant of continued incarceration.

Section 479 BNSS, corresponding to Section 436A CrPC, was introduced as a statutory guarantee to release prisoners who had served half the maximum sentence for their alleged offence. The research indicates, however, that its application in Assam remains sporadic and inconsistent. Courts do not systematically track the detention periods of undertrial prisoners, and the responsibility of invoking this provision often falls on the accused or their counsel—many of whom lack awareness or adequate representation. Prison authorities too have not been proactive in identifying eligible cases. The outcome is that many prisoners who are legally entitled to release continue to remain incarcerated, highlighting the gap between legislative

intent and implementation.

The establishment of UTRCs in every district was intended to institutionalise regular oversight of undertrial detention. In Assam, these committees exist and function under the framework laid down by the Supreme Court and NALSA, yet their impact has been limited. Meetings are irregular, record-keeping remains manual and incomplete, and their recommendations are advisory rather than binding. While some prisoners have been released through UTRC intervention, the numbers are disproportionately low compared to the scale of undertrial incarceration in the state. The committees largely succeed in highlighting the issue but fail to deliver consistent, systemic relief due to weak follow-up mechanisms.

The cumulative effect of judicial delays, ineffective bail practices, underutilisation of Section 479 BNSS, and weak UTRC functioning is reflected in Assam's overcrowded prisons. Data indicates that undertrial prisoners constitute the overwhelming majority of the prison population, placing immense pressure on already fragile prison infrastructure. Overcrowding exacerbates human rights concerns, leading to poor living conditions, limited access to healthcare, and heightened vulnerability of prisoners. For many detainees, prolonged incarceration results in loss of livelihood, disintegration of families, and social stigma—consequences that extend far beyond the prison walls and undermine the rehabilitative goals of criminal justice.

A comparative analysis reveals that other states have achieved more effective implementation of Section 436A CrPC and UTRC mechanisms. For example, Kerala and Delhi have institutionalised systematic monitoring of undertrial detention periods and digitised prison data, enabling timely identification of eligible prisoners. Maharashtra has developed coordination models between prisons, police, and legal aid authorities for faster disposal of undertrial cases. In contrast, Assam lags behind due to infrastructural limitations, weaker coordination, and administrative inertia. The absence of such best practices underscores the urgent need for Assam to adopt reform-oriented strategies.

The findings suggest that the crisis of undertrial detention in Assam is symptomatic of deeper institutional weaknesses in the criminal justice system. It demonstrates how statutory rights and judicial directions can remain ineffective without institutional accountability and socio-economic sensitivity. The denial of liberty to undertrials not only violates individual rights but also delegitimises the justice system in the eyes of the public. It fosters distrust, particularly

among vulnerable and marginalised communities, who perceive the system as structurally biased against them.

In summary, the analysis underscores that judicial delay, ineffective bail practices, the underutilisation of Section 479 BNSS, and weak UTRC functioning together perpetuate a cycle of prolonged detention and overcrowding in Assam's prisons. The findings highlight a critical disconnect between law and practice, where constitutional and statutory safeguards exist but remain largely inaccessible to those most in need. Unless systemic reforms are undertaken, the promise of liberty for undertrial prisoners will remain aspirational rather than real.

Recommendations

The findings of this study make it abundantly clear that prolonged undertrial detention in Assam is not merely the product of individual lapses but the consequence of systemic weaknesses across judicial, investigative, and administrative institutions. To address these challenges, a comprehensive reform agenda is required, combining legislative enforcement, judicial accountability, administrative coordination, and socio-economic sensitivity. The following recommendations are proposed:

1. Strengthening Judicial Capacity and Reducing Delays

One of the foremost steps is to address the chronic shortage of judges. The judge-to-population ratio in Assam must be improved by timely filling of vacancies in both the Gauhati High Court and subordinate judiciary. Establishment of additional fast-track courts, especially for undertrial cases involving petty offences, will significantly reduce pendency. Simultaneously, strict adherence to statutory timelines for filing charge sheets must be enforced through enhanced monitoring of police performance and greater use of technology-driven investigation tools. Courts must also institutionalise periodic case-flow management, ensuring that undertrial cases are prioritised and not allowed to stagnate.

2. Rationalising Bail Practices and Ensuring Equity

Bail practices in Assam must be reoriented towards equity and reasonableness. Courts should adopt a means-sensitive approach while fixing bail amounts, in line with Supreme Court directions in *Moti Ram v. State of M.P.* and *Dataram Singh v. State of U.P.*, ensuring that poverty does not translate into continued incarceration. Greater reliance must be placed on personal

bonds for indigent accused, and the provision for deposit of cash in lieu of surety under Section 445 CrPC/BNSS should be actively utilised. Judicial officers should be sensitised to avoid mechanical insistence on local sureties and to exercise discretion with compassion and proportionality. Additionally, the use of non-monetary conditions—such as community supervision, regular reporting, or electronic monitoring—should be explored to balance liberty with societal interest.

3. Effective Implementation of Section 479 BNSS (436A CrPC)

For Section 479 BNSS to serve its intended purpose, its enforcement must be institutionalised rather than left to chance or individual initiative. Courts in Assam should adopt a system of automatic review at the stage of remand hearings, where detention periods are tracked and prisoners nearing eligibility under Section 479 are proactively considered for release. Prison authorities should be mandated to prepare monthly lists of eligible prisoners, which must be placed before courts and Undertrial Review Committees (UTRCs) without delay. Legal aid lawyers must be directed to file appropriate applications on behalf of such prisoners, ensuring that statutory entitlements are not lost due to lack of awareness or representation.

4. Revitalising Undertrial Review Committees (UTRCs)

UTRCs must be made more effective by ensuring regular quarterly meetings with mandatory reporting to the High Court and the Assam State Legal Services Authority. Their ambit should be broadened beyond Section 479 BNSS cases to include prisoners in bailable offences unable to furnish surety, women, juveniles, persons with disabilities, and prisoners suffering from serious health conditions. The recommendations of UTRCs should carry binding effect, with district courts required to dispose of such cases within a prescribed timeframe. Digitisation of jail records and their integration with the e-prisons portal should be expedited to provide UTRCs with real-time data, reducing reliance on manual record-keeping.

5. Strengthening Legal Aid and Awareness

The effectiveness of bail and undertrial safeguards is closely tied to the quality of legal aid. Assam's legal aid services must be strengthened by increasing the number of trained legal aid lawyers, ensuring their regular interaction with prisoners, and providing special training on bail jurisprudence and Section 479 BNSS. Awareness campaigns should also be conducted in

prisons to educate undertrial prisoners about their rights and the mechanisms available to secure their release. Community-based organisations and paralegal volunteers may be mobilised to act as intermediaries, assisting families of prisoners in arranging sureties or complying with bail conditions.

6. Harnessing Technology for Speedy Justice

The use of technology can significantly mitigate the logistical challenges faced in Assam. Wider adoption of video-conferencing for remand hearings and witness depositions can reduce delays caused by non-production of prisoners. Development of digital dashboards for tracking undertrial detention periods, linked to court and prison management systems, can create automatic alerts when a prisoner becomes eligible for bail or release under Section 479 BNSS. Online verification of sureties and digital submission of bail bonds should be institutionalised to minimise delays caused by physical verification.

7. Addressing Socio-Economic Vulnerabilities

Special attention must be given to the socio-economic context of Assam's undertrial population, which disproportionately comprises the poor, marginalised, and illiterate. Bail policies should take into account the economic capacity of the accused, ensuring that conditions are not oppressive. State authorities may consider establishing a "Bail Assistance Fund" or Surety Support Scheme, operated through the State Legal Services Authority, to help indigent prisoners meet bail requirements. Such measures would ensure that liberty is not denied on grounds of poverty alone.

8. Monitoring, Accountability, and Oversight

Finally, vigorous monitoring mechanisms must be established to ensure accountability of institutions. The Gauhati High Court should create a standing committee on undertrial justice, tasked with reviewing UTRC performance, monitoring the implementation of Section 479 BNSS, and issuing regular directions to subordinate courts. Periodic inspections by judicial officers of district jails should be mandated to identify cases of prolonged detention. Independent oversight by the Assam Human Rights Commission and collaboration with civil society organisations can further strengthen transparency and accountability.

Conclusion

The study demonstrates that prolonged undertrial detention in Assam is the outcome of interlinked structural and procedural deficiencies, where judicial delays, an ineffective bail system, and weak enforcement of statutory safeguards such as Section 479 BNSS (436A CrPC) converge to deny liberty to those presumed innocent. The ineffectiveness of Undertrial Review Committees further reflects the gap between institutional design and ground-level implementation. The result is chronic prison overcrowding, systemic violation of Article 21, and disproportionate suffering for the poor and marginalised who lack the means to secure bail. While the legal framework for protecting undertrial rights is robust in theory, its inconsistent application reduces it to an illusory promise. To restore faith in justice, Assam must move beyond symbolic compliance towards substantive reform, by filling judicial vacancies, rationalising bail practices, strengthening UTRCs, and ensuring proactive application of Section 479 BNSS. Only then can the constitutional guarantee of speedy trial and personal liberty be meaningfully realised for undertrial prisoners.