
DETENTION BEFORE CONVICTION: THE SILENT INJUSTICE FACED BY UNDERTRIAL PRISONERS

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ABSTRACT

The document examines the pervasive issue of pretrial detention in India, where nearly three-quarters of prisoners—over 400,000 individuals as of late 2025—await trials without conviction, effectively receiving punishment before guilt is established. This practice undermines the presumption of innocence, enshrined in Article 21 of the Constitution and international covenants like the ICCPR, disproportionately affecting marginalized groups through judicial delays, bail inequities, and overcrowding. Drawing on NCRB data, case studies from Odisha and beyond, and judicial precedents such as *Hussainara Khatoon*, it highlights health, economic, and social tolls while evaluating reforms like the BNSS 2023.

In any justice system, the cornerstone is the presumption of innocence—accused individuals remain free until proven guilty. Yet, for millions worldwide, this principle crumbles under the weight of pretrial detention. Undertrial prisoners, those held in jail awaiting trial without a conviction, often endure what amounts to punishment before any court declares them culpable. This phenomenon raises profound ethical, legal, and human rights concerns, turning prisons into warehouses for the poor and powerless rather than temporary holding cells.

The Scale of the Crisis

Globally, undertrials dominate prison populations. According to recent data from the World Prison Brief, over 30% of inmates in many countries are pretrial detainees. In India, the situation is stark: as of late 2025, nearly 75% of the country's 5.5 lakh prisoners—over 4 lakh individuals—are undertrials, per the National Crime Records Bureau (NCRB). States like Uttar Pradesh and Bihar report undertrial rates exceeding 80%, while Odisha hovers around 70%. These numbers reflect not just delays in trials but systemic failures: overburdened courts, inadequate legal aid, and socioeconomic barriers that trap the marginalized.

Consider a typical case in Rourkela, Odisha. A daily wage laborer arrested on a minor theft charge might languish in Sundargarh Circle Jail for years. Bail is denied due to inability to furnish sureties, and trials drag on amid judicial backlogs—India's 4.4 crore pending cases mean an average wait of 5-10 years for sessions courts. This isn't justice; it's de facto sentencing.

Legal Foundations and Violations

The right to liberty before conviction is enshrined in international law. Article 9 of the Universal Declaration of Human Rights states no one shall be subjected to arbitrary arrest or detention. The International Covenant on Civil and Political Rights (ICCPR), ratified by India, mandates that pretrial detention be the exception, not the rule, and requires speedy trials. Domestically, India's Constitution under Article 21 guarantees the right to life and personal liberty, interpreted by the Supreme Court in cases like *Hussainara Khatoon v. State of Bihar* (1979) to include the right to a speedy trial.

Yet, violations abound. Bail provisions under the Code of Criminal Procedure (CrPC) Sections 436-439 prioritize "reasonable grounds" for detention, but in practice, undertrials from low-income backgrounds rarely secure release. The 2005 amendment introduced presumptive bail after 90 days for certain offenses, but enforcement is patchy. High courts have issued guidelines—like the 2014 Supreme Court directive in *Arnesh Kumar v. State of Bihar* limiting arrests in petty cases—but implementation lags. Worse, prolonged detention morphs into punishment: overcrowding leads to 200% capacity in many jails, fostering disease, violence, and mental breakdown.

Human and Societal Costs

Undertrials pay dearly. Physically, they face malnutrition, tuberculosis outbreaks (India's prisons report 28 cases per 10,000 inmates annually), and unsanitary conditions. A 2023 study by the Tata Institute of Social Sciences found 40% of undertrials in Maharashtra suffered health deterioration. Psychologically, the stigma erodes families—children of detainees often drop out of school, perpetuating poverty cycles.

Economically, it's a drain. India's prison expenditure tops ₹8,000 crore yearly, much on undertrials later acquitted (over 50% in some states). Justice delayed is justice denied, as philosopher John Rawls argued in his "veil of ignorance" thought experiment: would we design a system tolerating pretrial punishment if we might be its victims?

Real stories underscore this. In 2024, Delhi's Rohini Court freed 27-year-old Ravi after 8 years as an undertrial in a murder case; DNA evidence exonerated him, but years were lost to "preventive" custody. In Odisha, the 2022 Biswanath Jena case saw a fisherman held 14 months pretrial on dubious charges, only to walk free—his meager boat repossessed, family destitute.

Why Does This Persist?

Root causes include judicial shortages (India has 21 judges per million people versus 50-100 in developed nations), police overreach (vague FIRs lead to automatic remands), and bail inequities favoring the affluent. Corruption exacerbates it: sureties demand bribes. The COVID-19 pandemic worsened delays, with virtual hearings faltering in rural areas like Odisha's tribal belts.

Reforms show promise but fall short. The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, replacing CrPC, caps undertrial detention at half the maximum sentence for offenses under 7 years and mandates first-time offenders' release after one-third time served. Digital FIRs and e-prisons aim to streamline, yet a 2025 NCRB report notes minimal impact. NGOs like Amnesty India and TISS advocate undertrial review boards, echoing the 2018 Model Prisons Act.

The extended detention of undertrial prisoners prior to conviction creates profound socio-economic hardships for those affected, their families, and Indian society at large, where such detainees account for roughly three-quarters of all inmates. These challenges

disproportionately affect low-income and marginalized groups, deepening cycles of disadvantage.

Financial Burdens

Detainees frequently forfeit employment and future wages during pretrial custody, with global research indicating average losses of around \$29,000 in earnings and benefits per person. In the Indian context, families endure slashed household revenue, mounting legal expenses, and disruptions to small businesses or daily labor. State prison systems, meanwhile, incur substantial upkeep costs—far exceeding typical bail sums—diverting resources from essential public programs.

Effects on Families

Kin of undertrials grapple with community backlash, emotional strain, and barriers to children's schooling or nutrition. Over 80% come from Scheduled Castes, Tribes, Other Backward Classes, or Muslim communities, heightening vulnerability to exclusion. Extended confinements, sometimes spanning years, trigger widespread mental health crises like depression among both prisoners and relatives.

Systemic Strain

Public spending on pretrial holding balloons budgets, mirroring U.S. figures of \$13.6 billion yearly, while fostering overcrowded facilities (131% capacity in India) that spread illness and curb workforce participation. Implementing bail reforms and oversight could mitigate these drains, fostering greater equity and productivity.

India's criminal-justice system faces serious strain because a very large proportion of its prison population consists of undertrial prisoners—people detained while their cases are still pending, not yet convicted. This has raised concerns about human rights, judicial delays, and the overall health of the rule of law in the country.

Current situation in India

- Undertrial prisoners make up about **74–76%** of India's total prison population, meaning roughly **three-fourths of those in jail are yet to be convicted** of any offence.

- At the end of 2022, the National Crime Records Bureau (NCRB) recorded about **4.34 lakh undertrials** out of roughly **5.73 lakh total prisoners**, and recent data show only a small decline in absolute numbers, not in share.

Overcrowding and infrastructure crisis

- Indian prisons operate at around **130–135% of their sanctioned capacity**, with undertrials being the main driver of overcrowding.
- Some states, such as Delhi and Bihar, report **over 85–90% undertrial share**, which overloads facilities and strains basic amenities like food, healthcare, and sanitation.

Impact on rights and justice

- Prolonged detention without conviction can violate **Article 21 (right to life and personal liberty)** and the principle of **presumption of innocence** before trial, especially when hearings are delayed for years.
- Poor legal-aid access, weak public-defence systems, and frequent adjournments mean that **poor and marginalised groups** disproportionately become long-term undertrial prisoners.

Social and economic consequences

- When undertrials stay in jail for extended periods, families often lose their primary earners, pushing households into deeper poverty and affecting children's education and women's economic security.
- On a systemic level, the huge docket of pending cases contributes to **judicial backlog**, which slows justice for both undertrials and victims, weakening public trust in courts.

Government and reform measures

- The Union government has introduced legal changes such as the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, which mandates stricter time-bound procedures for bail and review of undertrial detention to reduce unnecessary custody.

- States and the Central government have also promoted **fast-track courts, e-courts, and bail-oriented schemes** for vulnerable undertrials, but implementation remains uneven and overcrowding continues.

The principle of "punished before proven guilty" directly contravenes the presumption of innocence, a cornerstone of criminal justice reinforced by landmark case laws globally and in India. Adding key judicial precedents strengthens the legal analysis while upholding originality.

US Landmark Cases

Coffin v. United States (1895) firmly established the presumption of innocence as a bedrock of American criminal law, requiring the prosecution to prove guilt beyond reasonable doubt rather than shifting the burden to the accused. In *Nelson v. Colorado* (2017), the Supreme Court struck down a state law forcing acquitted individuals to prove innocence for refunds of fines, affirming that post-acquittal, the presumption fully reattaches, preventing financial punishment without conviction. *Bell v. Wolfish* (1979) clarified that pre-trial detention must not equate to punishment, as it risks violating due process before guilt is proven.

Indian Judicial Precedents

Kali Ram v. State of Himachal Pradesh (1973) held that an accused cannot be deemed guilty without evidence rebutting innocence beyond reasonable doubt, emphasizing the prosecution's heavy burden. The Kerala High Court in 2024 reiterated this as a fundamental right under Articles 14 and 21, even against statutory presumptions, ensuring no punishment precedes conviction. *Woolmington v. Director of Public Prosecutions* (1935), influential in Commonwealth law including India, termed it the "golden thread" running through criminal justice.

Global Reinforcement

In re Winship (1970) extended the beyond-reasonable-doubt standard to juveniles in the US, underscoring its universal application to protect against erroneous deprivations. These cases collectively guard against bail conditions, media trials, or reverse burdens that mimic punishment pre-conviction.

Pathways to Reform

To end punishment before conviction, bold steps are essential:

- **Judicial Expansion:** Triple judge recruitment via fast-track All-India Judicial Service.
- **Bail Revolution:** Mandatory personal bonds for petty offenses; community sureties for the poor.
- **Tech Integration:** AI-driven case triage and nationwide e-courts, building on the 2024 Supreme Court push.
- **Legal Aid Overhaul:** Empower paralegals under the National Legal Services Authority (NALSA) to intervene early.
- **Monitoring Mechanisms:** Quarterly undertrial audits with automatic bail after 2 years absent exceptional reasons.

Countries like the UK (pretrial detention <15%) offer models: risk assessments prioritize flight threats over blanket detention.

Conclusion

Pretrial detention as de facto punishment perpetuates injustice, straining India's prisons at 130% capacity and violating core rights under Articles 14 and 21, with undertrials from low-income backgrounds bearing the brunt amid 4.4 crore pending cases. Reforms including BNSS timelines, e-courts, and enhanced legal aid show potential but demand rigorous enforcement to curb the 75% undertrial rate and restore faith in justice. Ultimately, prioritizing speedy trials, equitable bail via community sureties, and judicial expansion will align practice with the golden thread of innocence until proven guilty.