BAIL AS PUNISHMENT: EXAMINING INDIA'S UNDERTRIAL CRISIS THROUGH A SOCIO-LEGAL LENS

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ABSTRACT

In India, there is currently a crisis happening within the country's Criminal Justice System that has remained unobserved by many people; a high number of the country's inmates are held in pretrial detention (also known as undertrials) without receiving a conviction for an offense. According to the report from Prison Statistics of India 2024, 72.61% of inmates are undertrial inmates; 9,028 inmates have been in preconviction detention for more than five years. This paper will argue that under India's current bail system, which is based on monetary sureties, preconviction detention is de facto a form of punishment and disproportionately impacts the poor and marginalized people in India, which violates Articles 14, 21, and 22 of the Constitution of Indian. The paper will use a socio-legal methodology by examining constitutional protections, the evolution of bail law from the Code of Criminal

Procedure 1973 to Bharatiya Nagarik Suraksha Sanhita 2023 as well as important Supreme Court judgments from Hussainara Khatoon to Satender Kumar Antil. Although legislative and judicial reforms have been made, there continues to be a barrier to access of bail through usage of a financial surety as a result of the structure; for those who are unable to pay, there are little differences between the outcomes of preconviction detention and punishment. Finally, the paper will conclude with four structural reform proposals to address the underlying causes of the undertrial crisis instead of solely addressing the symptoms of an undertrial crisis.

Keywords: Bail, Undertrial Prisoners, Article 21, Pre-Trial Detention, Criminal Justice, Socio-Legal Analysis, India.

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1. INTRODUCTION

Prisons in India were holding 511,542 persons on December 31, 2024. The overwhelming majority (371,440 or nearly three-quarters) of persons in jail were either awaiting trial or awaiting their conviction. A total of 9,028 had been held for over five years and lost their employment, homes, and years of their lives due to an inability to pay bail. Under Indian law, bail has established a presumption that no one is guilty until proven guilty; thus all 371,440 persons in prison are considered to be legally innocent. This paper will discuss how the bail system can be an effective means of protecting liberty when it is utilized properly, but for the impoverished and marginalized populations, the bail system has become a form of pre-trial punishment, and will discuss the measures that must be undertaken to restore the constitutional guarantee of liberty for individuals who most need it.

This paper is guided by the following research questions:

First, why does undertrial detention in India persist for such extended periods despite constitutional and statutory safeguards? Second, does India's bail system create systemic inequality, particularly disadvantaging poor and otherwise vulnerable accused persons? Third, when undertrial detention becomes inordinately prolonged, does it amount to a violation of the constitutional guarantees enshrined in Articles 14, 19 and 21?

Thesis Statement

This paper argues that the bail system in India operates unfairly against poor and marginalised persons on account of their inability to meet monetary bail conditions, and that this functions as a form of punishment imposed prior to conviction. Since no person may be treated as guilty unless and until convicted, undue delay in securing release on bail amounts, in substance, to punishment without trial — in violation of the fundamental rights guaranteed under Article 21 (right to life and personal liberty), Article 14 (right to equality), and Article 19 (freedoms of movement and expression).

This paper progresses in the following manner. After this introduction, Section 2 provides an overview of existing scholarly literature relating to bail and pre-trial detention in India. An outline of the socio-legal methodology utilized in this paper will be presented in Section 3. An analysis of the data collected will be the primary focus of Section 4: I will begin by examining

the scope and characteristics of the crisis concerning the pre-trial detention of prisoners in India, before analyzing the legal framework underlying this problem. This framework is comprised of the constitutionally provided guarantees of the right to bail, the statutory law governing bail, and the doctrine of the judiciary as applied to this issue. After this analysis has been completed, I will perform a socio-legal analysis of how the bail system produces/recreates inequalities, along with a critique of recent efforts at legislative/judicial reform and some specific proposals for restructuring the bail system will be presented. Section 5 will provide a summary of the entire paper.

2. LITERATURE REVIEW

Scholarly literature has long identified India's disproportionate level of prolonged undertrial detention. Using National Crimes Records Bureau (NCRB) data, Chandra and Medarametla have found that the extent and duration of under trial detainment has increased over the years, despite legislative and judicial initiatives aimed at addressing this issue; this problem disproportionately impacts the socio-economically disadvantageous. They attribute this ongoing problem to a lack of prolonged, systematic implementation of reform measures at the operational level, and provide their conclusion that bail law should be examined structurally. Rustogi's previous work on bail as outlined in the Code of Criminal Procedure (1973) also highlights the tension between an individual's rights to liberty and a presumption of innocence and the public's need for safety. The tension identified in Rustogi's previous work has been revisited in the context of contemporary data and is combined with the procedural failures identified by the authors using data from Prison Statistics India 2024 and India Justice Report 2025; specifically, the longstanding inability to implement an effective bail system continues to worsen as evidenced by an ongoing dependency on monetary sureties despite legislative change through the Bharatiya Nagarik Suraksha Sanhita (2023).

3. METHODOLOGY

This research paper uses a socio-legal approach to study the statutory law, constitutional provisions, case law, and empirical research data reported by governments or institutions within India. The primary legal sources used in this research include the Constitution of India, the Code of Criminal Procedure, 1973; the Bharatiya Nagarik Suraksha Sanhita, 2023; and relevant Supreme Court and High Court decisions found through the use of efficient and reliable searching techniques. The empirical research data utilized is taken from the National Crime

Records Bureau (NCRB) Prison Statistics India (2024) and the India Justice Report (2025) issued by Daksh. The empirical research data referenced in this paper is evaluated using criteria for validity, reliability, and accuracy. A thorough evaluation of secondary academic literature has taken place to provide context for the findings found in this paper when viewed through the lens of existing research and literature. The present study is a secondary data analysis and will not include any primary data collected from undertrials and/or correctional officers or other correctional authority personnel (e.g., social workers).

4. MAIN ANALYSIS

4.1 Background and Context

4.1.1 The Undertrial Crisis: Scale and Scope

India's prisons are severely overcrowded, and the majority of those imprisoned have not been convicted of any offence. According to Prison Statistics India 2024, published by the National Crime Records Bureau, undertrial prisoner's persons whose guilt has not yet been established by a court of law constitute 72.6% of India's total prison population of 5,11,542 inmates.[2] In other words, nearly three out of every four persons currently behind bars remain legally innocent, yet are subjected to the full deprivation of imprisonment. This stands in direct contradiction to the foundational principle of criminal jurisprudence that no person shall be punished unless guilt is proven beyond reasonable doubt. This paper argues that such mass preconviction detention, sustained by a bail system that systematically excludes the poor, constitutes punishment in both effect and experience, in direct violation of the constitutional guarantees enshrined in Articles 14 and 21 of the Constitution of India.

The gravity of this crisis deepens when the duration of detention is examined. According to PSI 2024, as many as 9,028 undertrial prisoners have been confined for more than five years without conviction, while 20,908 remain detained between three and five years. A further 51,702 undertrials have spent between one and two years in custody. As Table 1 illustrates, these figures do not represent mere administrative delay they represent sustained deprivation of liberty imposed upon legally innocent persons, a reality indistinguishable from punishment.[3]

[2] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025) xi.
[3] ibid xvi.

Table 1: Duration of Undertrial Detention as on 31st December 2024

Duration of Detention	Number of Undertrials	Percentage
Up to 3 months	1,25,894	33.9%
3–6 months	72,452	19.5%
6–12 months	61,262	16.5%
1–2 years	51,702	13.9%
2–3 years	30,194	8.1%
3–5 years	20,908	5.6%
More than 5 years	9,028	2.4%

Source: National Crime Records Bureau, Prison Statistics India 2024

The undertrial crisis is not distributed uniformly across India but is concentrated in specific states with weak legal aid infrastructure and overburdened courts. PSI 2024 reveals that Uttar Pradesh alone accounts for 59,194 undertrial prisoners 15.9% of the national total followed by Bihar with 45,339 (12.2%) and Maharashtra with 31,523 (8.5%). Together, these three states hold 36.6% of all undertrial prisoners in the country.[4] The physical consequences of this concentration are stark. India's prisons operate at a national occupancy rate of 112.7%, meaning they hold significantly more inmates than they were designed for. In Delhi, this figure reaches 194.6% prisons holding nearly double their intended capacity.[5] Since undertrials constitute 72.6% of all prisoners, it is the failure of the bail system not the conviction rate that is principally responsible for this overcrowding.

4.1.2 The Poverty-Detention Link

India's bail system operates primarily through monetary sureties either a personal bond (also called recognizance) or a third-party surety requiring an accused person to furnish a financial guarantee as a condition of release.[6] While designed to secure appearance at trial, this

[4] ibid xii.
[5] ibid xiii.
[6] Aparna Chandra and Keerthana Medarametla (n 1).

mechanism functions in practice as an economic filter. An accused person who is financially stable secures release within hours of arrest; one without resources may remain in custody for months or years. The determining factor is not the gravity of the offence, the likelihood of conviction, or the risk of flight it is simply the ability to pay. In this manner, poverty becomes the primary basis for pre-trial detention.

The most compelling evidence of this poverty-detention link emerges not from cases where bail is denied, but from cases where bail is granted yet release does not follow. The India Justice Report 2025 records that the National Legal Services Authority identified 5,067 prisoners who had been granted bail by a court but remained in custody solely because they could not furnish the required sureties.[7] Of these, only 2,333 barely 56% were actually released following review. Nearly half remained imprisoned not because a court had ordered their continued detention, but because they were poor. This data demonstrates that monetary bail conditions do not merely delay release for the poor they permanently substitute detention for liberty.

Compounding the surety problem is the near-absence of effective legal aid. Applying for bail requires legal knowledge that most poor accused persons do not possess knowledge of applicable provisions, relevant precedents, and procedural requirements that only a lawyer can provide. Yet PSI 2024 records that legal aid was provided to only 38.2% of prisoners during 2024, leaving the majority without any legal assistance.[8] This problem was identified as far back as 1979, when the Supreme Court in Hussainara Khatoon v State of Bihar held that poverty and absence of legal representation were primary drivers of prolonged undertrial detention.[9] That this observation must be repeated four decades later supported by identical categories of data is itself a measure of the system's failure to reform.

4.1.3 Caste and Marginalisation Patterns

The undertrial crisis does not fall equally across Indian society. PSI 2024 reveals that Scheduled Caste prisoners constitute 69,864 of all undertrial prisoners, while Scheduled Tribe prisoners account for a further 17,916 together representing 87,780 of the total 3,71,440 undertrial population.[10] Given that these communities already face systemic disadvantage in access to financial resources and legal representation, their disproportionate presence among

[7] Daksh, India Justice Report 2025 (Tata Trusts 2025).
[8] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025).
[9] Hussainara Khatoon v State of Bihar (1979) 1 SCC 98.
[10] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025) 67.

undertrials is not coincidental. It reflects structural inequality reproduced through the bail mechanism system that compounds existing social marginalisation by making liberty contingent on wealth that historically disadvantaged communities are least likely to possess.

The consequences of bail denial extend beyond the accused person. PSI 2024 records that 933 women undertrial prisoners are currently confined with their children, resulting in 1,096 children living inside prison.[11] These children have been convicted of nothing. They are not accused of any offence. Yet they experience imprisonment as a direct consequence of their mother's inability to meet monetary bail conditions. The undertrial crisis, viewed through this lens, is not merely a failure of criminal procedure it is a humanitarian crisis that punishes the innocent alongside the accused.

4.2 Legal Framework

4.2.1 Constitutional Guarantees: Articles 14, 21 and 22

The constitutional foundation of any challenge to the bail system lies in Article 21 of the Constitution of India, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. In Maneka Gandhi v Union of India, the Supreme Court significantly expanded this protection, holding that the procedure must be fair, just and reasonable not merely a formality.[12] A bail system that detains legally innocent persons for years solely on account of their poverty cannot satisfy this test of reasonableness. Pre-trial detention that is prolonged, arbitrary and economically determined is not a fair procedure it is a constitutional violation.

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. The bail system, while facially neutral applying the same monetary conditions to all accused produces systematically unequal outcomes. A wealthy accused person and a poor accused person charged with the identical offence face dramatically different consequences: one returns home within hours, the other remains in prison for months or years. When the same legal provision produces such divergent results based solely on economic status, it ceases to be equal protection. It becomes institutionalised inequality, contrary to the guarantee of Article

[11] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025).
[12] Maneka Gandhi v Union of India (1978) 1 SCC 248.

14.[13]

Article 22 provides specific procedural protections against arbitrary arrest and detention including the right to be informed of the grounds of arrest, the right to consult a legal practitioner of one's choice, and the right to be produced before a magistrate within twentyfour hours.[14] These protections are rendered hollow for the poor accused who cannot afford legal representation and who, lacking knowledge of their rights, are unable to exercise them. The constitutional architecture thus contemplates protection against arbitrary detention yet the bail system systematically denies that protection to those who need it most.

4.2.2 Bail Law: From the Code of Criminal Procedure to the Bharatiya Nagarik Suraksha Sanhita

The primary statutory framework governing bail in India was the Code of Criminal Procedure 1973, which classified all offences into two categories bailable and non-bailable.[15] For bailable offences, bail was a matter of right; for non-bailable offences, it remained at the discretion of the court. Section 436A of the CrPC introduced an important protection allowing undertrial prisoners who had served half of the maximum sentence for the alleged offence to apply for release on personal bond. However, the requirement of monetary sureties persisted across both categories, ensuring that the structural exclusion of the poor remained embedded in the statute itself.

The Bharatiya Nagarik Suraksha Sanhita 2023, which replaced the CrPC, introduced certain reforms to the bail framework. Section 479 of the BNSS replacing Section 436A of the CrPC extended the benefit of early release to first-time offenders who have served one-third of the maximum sentence for the alleged offence, as opposed to the previous threshold of one-half.[16] The provision for electronic transmission of bail orders was also introduced, aimed at reducing procedural delays between the grant of bail and actual release. However, the fundamental requirement of monetary sureties as a condition of release was retained, leaving the structural inequality at the heart of the system entirely undisturbed.

[13] Constitution of India 1950, art 14.
[14] Constitution of India 1950, art 22.
[15] Code of Criminal Procedure 1973, ss 436–439.
[16] Bharatiya Nagarik Suraksha Sanhita 2023, s 479.

The gap between legislative intent and ground reality is starkly illustrated by the data on Section 479 BNSS. Despite the provision being available to a significant proportion of undertrial prisoners, PSI 2024 records that only 627 undertrial prisoners were released under Section 479 BNSS or Section 436A CrPC during 2024 out of a total undertrial population of 3,71,440.[17] This figure less than 0.2% of all undertrials demonstrates that legislative reform, without systematic institutional implementation, produces negligible impact. The law exists on paper; the crisis continues in practice.

4.2.3 Judicial Doctrine: Key Cases

As discussed above, Maneka Gandhi v Union of India established that Article 21 demands not merely procedural compliance but substantive fairness a standard that prolonged, poverty-driven detention cannot meet.

The principle that bail is the rule and imprisonment the exception was authoritatively stated in State of Rajasthan v Balchand, where the Supreme Court held that deprivation of liberty pending trial must be the last resort of the criminal justice system.[18] This principle has been affirmed in virtually every subsequent bail judgment yet its practical impact remains limited, as the undertrial data demonstrates.

The most direct judicial confrontation with the undertrial crisis came in Hussainara Khatoon v State of Bihar, where the Supreme Court found thousands of undertrial prisoners in Bihar confined for periods exceeding the maximum sentence for their alleged offence.[19] The Court held that the right to speedy trial is a fundamental right under Article 21 and that prolonged detention of undertrials without trial is unconstitutional. Crucially, the judgment identified poverty and absence of legal aid as the primary structural causes of this detention a finding that PSI 2024 confirms remains accurate forty-five years later.

In Arnesh Kumar v State of Bihar, the Supreme Court addressed a contributing cause of the undertrial crisis the practice of mechanical and unnecessary arrests by police.[20] The Court issued guidelines requiring police officers and magistrates to apply their minds to the necessity of arrest before effecting or authorising it. By recognising that unnecessary arrest directly

[17] 17National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025)
[18] State of Rajasthan v Balchand (1977) 4 SCC 308.
[19] Hussainara Khatoon v State of Bihar (1979) 1 SCC 98.
[20] Arnesh Kumar v State of Bihar (2014) 8 SCC 273.

produces unnecessary detention, Arnesh Kumar acknowledged that the undertrial crisis is not solely a product of bail law but of the entire pre-trial process.

In Sanjay Chandra v CBI, the Supreme Court reiterated that the object of bail is neither punitive nor preventative but is simply to secure the accused's presence at trial.[21] The Court cautioned that detention pending trial must not be used as an instrument of oppression. This observation is significant because it expressly acknowledges the risk that pre-trial detention may function as punishment the very argument this paper advances with respect to undertrial prisoners who cannot meet monetary bail conditions.

The most comprehensive judicial response to the undertrial crisis came in Satender Kumar Antil v Central Bureau of Investigation, where the Supreme Court issued detailed guidelines on bail, categorised offences for the purpose of determining bail eligibility, and directed courts and police to strictly apply the principle of bail not jail.[22] The judgment represented the Court's most sustained attempt to address structural failures in the bail system through judicial direction. Yet PSI 2024 published two years after this judgment records 3,71,440 undertrial prisoners, with 9,028 confined for more than five years. The persistence of these figures after Satender Kumar Antil demonstrates a fundamental truth: judicial directions alone, without legislative reform and institutional change, cannot dismantle structural inequality embedded in the bail system.

4.3 Socio-Legal Analysis

4.3.1 How monetary bail structurally excludes the poor

The key issue with the bail system is not what is written in its text, but how it is implemented. The system requires every accused person to post monetary surety. However, this monetary condition, being applied to persons that are unequal in their economic status, is applied unequally as well. While one accused will find it easy to post a surety of ₹20,000, the other one will find it impossible to do so. As a result, the formal equality of the rule that is, the equality of the requirement of posting monetary surety is achieved through a great degree of substantive inequality, namely, different outcomes of this application for the rich and for the poor. The difference between formal and substantive equality has been emphasized in the Article 14

[21] Sanjay Chandra v CBI (2012) 1 SCC 40.
[22] Satender Kumar Antil v Central Bureau of Investigation (2022) 10 SCC 51.

jurisprudence for a long time, and it means that identical treatment of unequal people does not equal equality before law.[23]

4.3.2 Judicial discretion and its inconsistencies

Another structural issue is that of the inconsistency in exercise of discretion on bail. While bail is a matter of judicial discretion in cases of non-bailable offences with certain general factors like nature of offence, risk of absconding and tampering with evidence taken into consideration, this process is not consistent. The outcome of two accused persons charged with same offence having same background may vary according to the court where the case is tried and/or the judicial mind presiding over it. An attempt to eliminate some element of unpredictability in exercise of discretion was made by the Supreme Court in Satender Kumar Antil v CBI by classifying offences and giving guidance on how discretion should be exercised. However, this being the essence of discretion, the outcome remains unpredictable despite the judgment. The unpredictability works to the detriment of the poor accused who lack the means to cope up with repetitive bail applications, appoint senior advocates to give their case a favorable interpretation or make an appeal when bail is refused at the first stage itself. The wealthy person may consider it an initial setback; the poor person will have to endure detention for months/years.

4.3.3 Undertrial detention as de facto punishment

The fundamental premise of the current paper hinges upon one basic idea: whereas detention pre-sentencing is identical to detention post-sentencing, the very term "undertrial" loses its distinctive value.[24] Punishment, in reality, involves inflicting pain and suffering, depriving of liberty and imposing social stigma in response to some wrongdoing. Undertrial prisoners detained for five years or more, like 9,028 of them now are, suffer all these consequences fully loss of liberty, separation from family and work, and social stigma in despite of the fact that they were never convicted of anything.[25] Indeed, even the Supreme Court warned about exactly such an outcome in the case of Sanjay Chandra v CBI, advising that detention during trial should never be used for oppressive purposes.[26] However, the numbers analyzed in the course

[23] Constitution of India 1950, art 14.
[24] Malcolm M Feeley and Jonathan Simon, 'The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications' (1992) 30(4) Criminology 449.
[25] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025) xvi.
[26] Sanjay Chandra v CBI (2012) 1 SCC 40.

of the current paper reveal the fact that this warning was ignored. Almost half of all bail prisoners who are unable to provide sureties remain detained, which means that even a favorable court decision brings no freedom.[27] Given such circumstances, where detention is indistinguishable from punishment and court relief does not result in release, the very difference between "undertrial" and "convict" loses its meaning for the poor accused.

This crisis has socio-legal ramifications that are more than simply within and without class systems. Scheduled Caste and Scheduled Tribe undertrials together comprise a large majority of India's total undertrial prisoner population, while hundreds of women continue to be held in prisons with their children in tow.[28] These findings are evidence that the bail system as an impartial means of determining whether someone is likely to flee and/or pose a threat to society is inaccurate; instead, it acts as a tool to channel historically marginalised people towards protracted periods of detention before their trial and thus increase the current levels of inequality in society via the means of criminal procedure.[29]

4.4 Gaps and Critique

4.4.1 Failures of BNSS reforms

The Bharatiya Nagarik Suraksha Sanhita 2023 introduced a variety of reforms to modernise the criminal justice system of India and to remedy age-old failures of the bail system. In practice, however, the reforms made will mostly be cosmetic in nature and make little difference overall. The threshold for first time offenders to qualify for an early release has been lowered from 50% to 33% of the maximum possible sentence they could receive.[30] This is a step in the right direction by reducing procedural delays through the provision of electronic transmission of Bail Orders. However, the provision establishing those economic conditions (monetary surety) which create the undertrial crisis was not reformed in any way. This omission can be clearly established through the statistical record. In 2024, there were only 627 prisoners who received relief under Section 479 out of a total of 3,71,440 undertrial prisoners.[31] A mechanism to create structural change through reforming the procedures and maintaining the

[27] Daksh, India Justice Report 2025 (Tata Trusts 2025).
[28] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025) 67.
[29] Constitution of India 1950, arts 14 and 21.
[30] Bharatiya Nagarik Suraksha Sanhita 2023, s 479.
[31] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025)

existing problem will not yield the desired results and is reflected in the BNSS data.

4.4.2 Why Satender Kumar Antil has not changed ground reality

There exists a similar trend within the judicial system as it does outside of it. In recent years, the case of Satender Kumar Antil v CBI is arguably the most extensive example of a court having made an interference with bail procedures, and provided courts with distinct categories of offences and directions to use the principle of bail not jail.[32] Regardless, a judgement made by one court provides binding authority on other courts; it does not create the institutional infrastructure necessary to enforce that judgement. The police require training so as not to implement unnecessary arrests; and jails require established procedures to process releases after bail has been granted; and legal aid authorities require resources and personnel to provide support to those that cannot navigate the bail process without assistance. None of these institutional components were addressed by the judgement in question, and as the findings of PSI 2024 demonstrate (published two years after Satender Kumar Antil), there has been no change in the number of undertrials held or the duration of their detention.[33] Therefore, this paper identifies the underlying issue as being not purely doctrinal. The principles articulating the appropriate basis for bail have been articulated correctly according to India's bail jurisprudence consistently and over time beginning in or before the year 1977. What is lacking is the institutional framework required to translate these principles into a tangible outcome. Continued judicial direction and amendments to legislation will have very little impact until they are matched with consistent investment into the legal aid system, prison systems and a review system.

4.5 Suggestions and Way Forward

4.5.1 Abolish monetary surety as default

The continued existence of the undertrial issue despite several judicial interventions indicates that incremental reform is not going to solve this problem. The following changes are aimed at eliminating the structural basis for the issue outlined in this report.

Personal recognizance has to be the primary method by which bail is allowed, and monetary

[32] Satender Kumar Antil v Central Bureau of

[33] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025)

surety should be removed. A personal recognizance will be able to be verified by local identification, with actual evidence of flight risk. This addresses the single biggest conclusion of this report that ability to pay, and not risk to the community, is the determining factor in who spends time in jail after an arrest.[34]

4.6.2 Mandatory bail-on-appearance for minor offences

For minor and non-violent crimes, bail must be automatic as opposed to being at the discretion of the judge. The principle in State of Rajasthan v. Balchand that bail is the normal and jail is the exception must have statutory provision in order that it does not remain as just a repeating wish in the various court decisions but become real through some sort of enforcement.[35]

4.6.3 Legal aid at the bail stage

Legal counsel must be provided at the time of arrest and at the first appearance before a magistrate and not just at the later stages of trial. As a consequence of the fact that only 38.2% of detainees have access to legal counsel, and since the court process does not follow a speedy process, providing legal counsel at an early stage can reduce falsely being incarcerated because of the bail process.[36]

Periodic & mandated review committees will be formed in all of the districts to review pretrial minimum time in jail & other ways to assist convicted persons granted bail but unable to furnish sureties ("bond") from being held in jail due to not being able to furnish bond or being held in jail longer than the statutory limits established under Section 479, BNSS.[37]

Despite NALSA's attempt to identify 5,067 (including those released this way) who have been incarcerated under the above conditions and release them according to their respective statutory provisions, any future detention/release project should not only be isolated to those identified for detention/release from above but should instead be established as part of an ongoing institutional course of action.[38] [39]

[34] Constitution of India 1950, arts 14,
[35] State of Rajasthan v Balchand (1977) 4 SCC 308.
[36] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025).
[37] Bharatiya Nagarik Suraksha Sanhita 2023, s 479.
[38] National Legal Services Authority, 'Undertrial Review Committee Report' (NALSA 2015).
[39] Daksh, India Justice Report 2025 (Tata Trusts 2025).

5. CONCLUSION

This research paper demonstrates how India's monetary bail structure permits pre-conviction punishment instead of functioning as an impartial measure designed to ensure individuals return to court after being granted bail. The evidence provided here illustrates that 72.6% of individuals currently incarcerated in India are awaiting trial.[40] Many under-trial detainees remain in jail for years without being convicted of an offence, while most of those who are granted bail remain incarcerated solely because they cannot afford the monetary amount necessary for their financial release.[41]

Furthermore, Article 21 of the Indian Constitution guarantees every citizen their right to liberty; Article 14 guarantees each citizen equality before the law; Article 22 protects every citizen from arbitrary detention by providing the right to a fair trial.[42] The judiciary has continuously upheld its mandate to issue bail, as evidenced by cases such as Hussainara Khatoon (1989) and Satender Kumar Antil (2022).[43] However, the reality experienced by most under-trial prisoners in 1989 and today is starkly different from the promises made by India's Constitution, and constitutes a disproportionate burden on impoverished individuals, particularly from historically disenfranchised and marginalized communities.

When addressing this bail crisis, we must look beyond judicial admonishment towards reforming the system. We must eliminate monetary bail as a requirement for release from detention, specifically by providing adequate legal assistance to the impoverished at the earliest opportunity in order to prevent further pre-conviction punishment of the poor as a result of being poor.

[40] National Crime Records Bureau, Prison Statistics India 2024 (Ministry of Home Affairs 2025) xi.
[41] ibid xvi.
[42] Constitution of India 1950, art 21.
[43] Hussainara Khatoon v State of Bihar (1979) 1 SCC 98; Satender Kumar Antil v Central Bureau of Investigation (2022) 10 SCC 51.

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