
RIGHTS OF UNDERTRIAL PRISONERS IN THE PRESENT SCENARIO

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ABSTRACT

Undertrial prisoners constitute more than three-fourths of India's total prison population, revealing the persistent crisis of pre-trial detention and judicial delay. Their prolonged incarceration often undermines basic constitutional rights guaranteed under Articles 14, 21, 22, and 39A of the Indian Constitution. Despite multiple judicial interventions and policy efforts, systemic barriers—such as poverty, overcrowding, and lack of legal awareness—continue to plague the justice process. Recent legislative reforms, including Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which liberalizes bail for first-time offenders, mark significant progress toward humanizing the criminal process. This paper analyzes the legal framework governing undertrial rights, highlights existing lacunae, and discusses ongoing reforms and possible paths forward to ensure fair, humane, and speedy justice.

Constitutional Foundations

The Indian Constitution places the protection of life, liberty, and dignity at its core. Article 21, which guarantees the “right to life and personal liberty,” has been expansively interpreted by the Supreme Court to include the right to a speedy trial, humane treatment in custody, and the right to legal assistance. The landmark case *Hussainara Khatoon v. State of Bihar* (1979) established that keeping an accused in detention for years without trial constitutes a clear violation of Article 21. The ruling transformed the discourse on criminal justice by recognizing that the right to a speedy trial is a fundamental right, not a privilege.

Article 22 ensures procedural equity at the time of arrest, guaranteeing that every arrested person is informed of the grounds for arrest, has the right to consult a lawyer, and is produced before a magistrate within twenty-four hours. These safeguards are instrumental in preventing arbitrary detention.

Further, Article 39A mandates the provision of free legal aid to ensure that justice is not denied due to economic hardship. This provision has evolved into a vital mechanism for securing fairness for undertrials, most of whom belong to socio-economically weaker sections. Article 14 complements these provisions by upholding equality before the law, ensuring that no person suffers disproportionate detention or discriminatory treatment.

Collectively, these constitutional principles embody a humane approach toward criminal jurisprudence—one that values liberty and fairness as essential cornerstones of justice.

Statutory Protections and Reforms

Beyond constitutional guarantees, several statutory measures define and safeguard the rights of undertrial prisoners. The introduction of Section 479 under the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, represents one of the most progressive steps in recent times. This section replaces the earlier Section 436A of the Code of Criminal Procedure (CrPC) and entitles an undertrial to bail after serving one-half of the maximum sentence for the alleged offence. For first-time offenders who have never been convicted previously, the provision is even more liberal—allowing release after completion of one-third of the maximum sentence for non-capital offences.

Importantly, the Supreme Court has clarified that Section 479 shall have retrospective effect,

enabling individuals detained under the old CrPC framework to benefit from the amended rule. This change, in spirit and substance, aligns with the right to liberty under Article 21 and the global movement against excessive pre-trial detention.

Complementing this development, the Model Prison Manual (2016) and the newer Model Prisons and Correctional Services Act (2023) emphasize humane treatment, separation of undertrials from convicts, and regular legal review of detention. The 2023 model law introduces welfare-based correctional services, acknowledging that undertrials are not convicts and must enjoy a standard of treatment consistent with the presumption of innocence.

Key Rights in Practice

While laws and manuals exist, their realization depends on active enforcement. The following rights crystallize from the existing legal framework and judicial precedents:

Right to Speedy Trial: Judicial delay remains the cardinal cause of prolonged undertrial detention. Courts are constitutionally obligated to prioritize such cases. The Supreme Court has repeatedly ruled that unreasonable delay, if caused by systemic inefficiency rather than the accused, mandates release on bail or bond.

Right to Legal Aid and Representation: Article 39A, operationalized through the Legal Services Authorities Act, 1987, ensures free legal counsel at every stage—arrest, bail, trial, and appeal. The National Legal Services Authority (NALSA) and State Legal Services Authorities (SLSAs) deploy panel lawyers to assist undertrials unable to afford private representation.

Right to Dignity and Humane Conditions: Routine handcuffing, solitary confinement, or denial of basic hygiene and healthcare have been held unconstitutional. Prison manuals prescribe that undertrials have the right to adequate food, clothing, medical aid, family visits, education, and recreational opportunities.

Right to Bail and Fair Consideration: Courts are encouraged to adopt a liberal approach to bail, particularly for non-violent and first-time offenders. The presumption favors liberty, and denial must rest on concrete risks such as flight or interference with evidence.

Right to Communication and Visits: Prisoners may correspond with family members and meet lawyers under regulated security norms. The principle of maintaining family contact is

recognized as vital to rehabilitation and psychological well-being.

Current Challenges and Ground Realities

Though the legal framework appears comprehensive, its practical application faces several impediments. As of 2025, official statistics reveal that around 77% of India's prison population comprises undertrials, most detained due to economic inability to furnish bail bonds. India's 1,300-plus prisons operate at an average occupancy of 130%, leading to health hazards, violence, and mental stress. Delays in police investigations, shortage of judges, and procedural inefficiencies aggravate the plight of detainees.

Socio-economic inequalities manifest sharply in detention patterns—marginalized communities, including Scheduled Castes, Scheduled Tribes, and minorities, are disproportionately represented among undertrials. Additionally, despite NALSA's outreach, legal aid infrastructure suffers from inadequate manpower and awareness. Many prisoners remain unaware of their entitlement to free counsel or bail provisions under the BNSS.

While the Supreme Court has directed all states to establish High-Powered Committees for periodic review of undertrial cases, compliance varies widely. Some states have introduced digital monitoring mechanisms through e-prison systems, but these remain underutilized due to limited connectivity or bureaucratic inertia.

Policy Developments and Institutional Initiatives

In recent years, the government and judiciary have worked in tandem to address chronic challenges in the criminal justice system. The Model Prisons and Correctional Services Act, 2023 marks a paradigm shift toward correction-oriented administration, emphasizing education, health, and reintegration for undertrials. It also mandates separate barracks and records, reducing the psychological impact of confinement alongside convicts.

Digitization under the e-Courts Project (Phase III) enables virtual hearings for bail applications, reducing logistic delays and prisoner transport burdens. Simultaneously, Lok Adalats and Fast-Track Special Courts have taken up cases involving petty offences to expedite resolution and prevent unnecessary incarceration.

The Ministry of Home Affairs has urged state governments to implement Section 479 BNSS

proactively, releasing eligible undertrials to reduce overcrowding. Moreover, periodic awareness campaigns, conducted through District Legal Services Authorities, inform prisoners about recent statutory changes and their procedural rights.

Pathways Forward

Despite incremental progress, India must move decisively toward a just and efficient criminal justice model. The following reforms could significantly improve the situation:

Expeditious Trials: Setting time limits for investigation and trial in non-serious offences, aided by digital documentation and video testimony.

Alternatives to Detention: Promoting plea bargaining, probation, and community service to minimize pre-trial incarceration.

Data Integration: Linking police, courts, and prison databases to automatically flag eligible undertrials under BNSS provisions.

Strengthening Legal Aid: Expanding NALSA and SLSA capacity through trained paralegals and legal clinics in prisons.

Judicial Accountability: Regular monitoring by High Courts to identify cases where detention exceeds statutory limits.

Aligning India's practices with international instruments such as the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) will reinforce the humanitarian foundation of its justice system.

Conclusion

The condition of undertrial prisoners remains a litmus test for a nation's commitment to justice and human dignity. While constitutional and statutory safeguards firmly protect personal liberty, their efficacy depends on faithful implementation. Reforms like Section 479 BNSS and modernization of prison administration indicate a promising direction. However, bridging the gap between law and reality demands political will, judicial empathy, and administrative innovation. Ensuring that no citizen suffers incarceration beyond necessity is not merely a legal

duty but a moral imperative that defines the credibility of India's democratic and constitutional order.