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UNDERTRIAL PRISONERS IN INDIA: LONG WAIT FOR JUSTICE

ABSTRACT

The Indian reality of prisons is the picture of jails overflowing with **undertrial prisoners**, accumulating the number of undertrial prisoners is one of India's foremost problems today, most of whom are from poor and marginalized communities. The other major concern with the undertrial prisoners is their illiteracy and unawareness level. Thousands of them continue to languish in prisons despite landmark judgments by the Supreme Court and various high courts. The issue of undertrial prisoners is a very serious one impacting the right to a fair trial as borne out by statistics. According to the '**Prison Statistics India**' report published by the **National Crime Records Bureau (NCRB)** in 2020, there were as many as 4,88,511 prison inmates of whom **77.1% or 3,71,848 were undertrials**, around 3/4 of prisoners languishing in Indian jails are undertrials. The difference between under-trial and normal prisoners is that the former is essentially in jail for something they are still not 'guilty' of. Efforts to decongest Indian prisons and reduce the under-trial population have continued for over two decades. In order to provide immediate relief to undertrial prisoners, the Court passed an interim order directing the setting up of a mechanism for the proper implementation of **Section 436A CrPC** and the release of undertrial prisoners from jails in accordance with the provisions of the section. The research talks about legal aid, police torture, and the degrading quality of life that undertrials lead, including the failure to actualize the segregation between undertrials and convicted criminals. Moreover, our nation is particularly ill-famed for the slow pace of our justice systems. This paves the way for the delay in trials due to the lakhs and lakhs of case backlogs pending in our country. That is why one of the most basic human rights issues that pertain to these prisoners is this lengthy judicial process that often takes entire lifetimes to even start, there will be a need to change the bail system, an improvement in the quality of life of undertrials and an increase in the judge-population ratio. The aim is not solely to ensure the dispersal of justice but also to ensure equality in the justice dispersed.

Keywords: Under-trial Prisoners, Speedy Trial, Languishing, Guilty, Dispersal of justice

I. INTRODUCTION

It is our legal system that says that, **Even if a hundred convicts escaped, not a single innocent person should be punished... It also says that if justice is delayed, it is injustice.** Indian Jails have thousands of such Undertrials. Judicial reform is now the single most important reform India needs. It means the full legal process chain including judiciary, police, prison, legal aid, and various tribunals. The rotten police and judicial system need urgent reforms. Much of the communal tension will vanish if these are seen as impartial.

Undertrial prisoners, by definition, are individuals accused of committing an offense but who have not been found guilty by a court of law. They are in legal limbo, awaiting their day in court and the determination of their innocence or guilt. While the concept of the undertrial is not unique to India, the sheer magnitude of the issue within the Indian context is staggering. The protracted delays in the legal process, exacerbated by systemic inefficiencies, resource constraints, and the complex labyrinth of laws, leave thousands of individuals in legal purgatory, unsure of when they will see the light of justice.

The Indian criminal justice system is facing a major challenge, the large number of undertrial prisoners. According to the National Crime Records Bureau (NCRB), there were over 4.27 million prisoners in India in 2021, of which 77.1% were undertrials. This means that over 3.2 million people are currently languishing in Indian prisons, awaiting trial. There are many reasons for the high number of undertrial prisoners in India. The criminal justice system's slow pace and lack of legal aid have led to the long-term incarceration of undertrial prisoners. Many are unable to afford bail and lack access to a lawyer, making it difficult for them to defend themselves. This long wait has negative consequences, including poor living conditions, lack of quality healthcare, and abuse and exploitation. The government has attempted to address this issue, but so far, it has been unsuccessful. The long-term incarceration of these individuals breaches their right to liberty and deprives them of their human rights.

They may lose their jobs, their homes, and their families. They may also be subjected to violence and abuse in prison. In some cases, they may even be innocent of the crimes they are accused of. The issue of undertrial prisoners is a serious one that needs to be addressed. The government needs to take steps to speed up the criminal justice system and provide more legal aid to undertrial prisoners. Only then can we ensure that everyone has a fair chance at justice.

RESEARCH PROBLEM

India's forgotten prisoners are Undertrials those who are not actually being convicted. The **Aryan Khan case** forged a fresh spotlight on all the loopholes of the Indian judiciary. Nearly 76 percent of those accused in various cases and various courts still languish behind bars. Over 20 days in jail without bail for a drug case in which no substance was found on him or consumed. The truth is Aryan Khan is not an exception but does not. Being a Bollywood superstar's son gets him the headlines, but there are thousands like him who are languishing in prisons and waiting for bail. 76 percent of 4,88,511 prisoners are undertrials, 36 percent undertrials confined for more than a year, and over 5,011 undertrials lodged in jails for more than 5 years without bail. This was when the Supreme Court spelled out its **Bail Doctrine** long back in 1977, **when a historic judgment in the State of Rajasthan vs Bal Chand case Justice V Krishna Ayer said, the basic rule may perhaps be tersely put as bail, not jail'**. Another reason is our Judicial system, India for example 21 judges for a million population, compared with countries like Australia 48 judges, the United Kingdom 56, the United States of America 102, and China 147. Overcrowded jails, unnecessary arrests, and a long judicial process are issues faced by the Indian legal system and judiciary. Over 5,000 preventive detention cases have been recorded, aiming to maintain public order and prevent further offenses. The issue is exacerbated by disadvantaged social groups, lack of resources, and inadequate investigation. India has laws like the Sedition Law and Unlawful Activities (Prevention) Act to address these issues.

LITERATURE REVIEW

1. Covid-19 Lockdown: A juncture to Re-think on undertrials

The book on undertrial in India is an authoritative and comprehensive book on the period of COVID-19. In addition, the judiciary supports excessive pre-trial imprisonment and the denial of the right to a fair trial in various ways. Pre-detention alternatives, for example, are not fully considered. Or by ignoring excessive delays brought on by government organizations like the police and the prosecution. This book has helped me understand conditions in jails.

2. Behind bars: prison tales of India's most famous

Sunetra Choudhury's book is based on extensive interviews with some of India's most well-known inmates. It includes some interesting anecdotes about the lives of the rich and powerful prisoners. Questions the primary purpose of imprisonment – is it reform, punishment or just misusing the system.

3. Prison administration & reforms in India

The book by Meetal Handa is one of the most authoritative books on prisoners in India and also deals with the general problems of Indian prisons, which undoubtedly play an important part in understanding the challenges faced by prisoners and staff.

SCOPE AND OBJECTIVES

1. To analyze causes or reasons for the long-term judicial process.
2. To analyze whether there will be a need for change in the bail system.
3. To critically analyze reasons behind legal logjam.
4. To critically analyze the conditions of the prisons in India including health care.
5. To critically analyse whether the judiciary providing legal aid.
6. To critically analyze the whether issue of undertrials in India is a very serious one impacting the right to a fair trial.
7. To critically analyze whether there is a need for Alternative Dispute Resolution.

RESEARCH QUESTIONS

1. The Indian prison system and what factors contribute to overcrowding in Indian jails?
2. What are existing legal solutions reforms and recommendations for improving the Indian prison system?
3. What Rights do undertrial prisoners have and relevant case laws?
4. Why are the Indian courts moving at a snail's pace?

HYPOTHESIS

There is no significant relationship between age and awareness of the term undertrial prisoners. The ratio of undertrial prisoners is higher than that of convicted prisoners. In comparison to convicts who have been convicted, more prisoners are awaiting trial.

RESEARCH METHODOLOGY

A descriptive and analytical method is followed throughout the course of the paper. The study is based on Primary and Secondary Data. Primary sources referred to in this paper include Statutes, Cases, and Books. Secondary sources include various articles and journals that have been referred to for the purposes of this paper. All the information gathered has been studied analytically to deal with the Research Questions. The descriptive research method is used to obtain information concerning the current scenario with respect to the research problem. All the necessary and relevant materials that form a part of the study are collected from a wide range of sources including books, articles, journals, newspapers, reports, and various seminars.

II. INDIAN PRISON SYSTEM AND WHAT FACTORS CONTRIBUTE TO OVERCROWDING IN INDIAN JAILS

Film star **Salman khan** got bailed within hours of his conviction but the justice delivery system is not as proactive in the case of common prisoners or undertrials. Nearly 77.1% of Inmates in Indian jails are undertrials, which is the highest in 25 years and most of them belong to Muslims, tribals, Dalits, and marginalized castes including SC and ST, and other backward classes according to government data. Even Thousands of them continue to languish behind bars despite most of their offenses being bailable offenses. With over a staggering 47 million cases pending before in all Indian courts, Of them, 87.4% are pending in subordinate courts, 12.4% in High courts. Nearly 1,82,000 cases have been pending for over 30 years, undertrials on the rise. there were as many as 4,88,511 prison inmates of whom 77.1%, or 3,71,848, were undertrials, around 3/4 of prisoners languishing in Indian jails are undertrials. At present, India has a sanctioned strength of 25,628 judges over 4.7 crore cases are pending in courts across different levels of the judiciary¹.

In a recent session of state chief ministers and chief justices of high courts, PM Narendra Modi brought up the subject of prisoners awaiting trial who are being held in jail. He also discussed making early judgments based on legal considerations of human sensibility. There is no doubt that this topic is delicate. In the rest of the world, 18–20% of convicts fall within this undertrial group; in India, however, this percentage is closer to 76%. brought up the topic of individuals who are incarcerated but have not yet been found guilty or guilty pending trial. The fact is that many individuals in India are still awaiting verdicts in ongoing trials; as a result, nothing is being accomplished². With the Indian judiciary, they always say they are overburdened and the public says that **‘JUSTICE DELAYED JUSTICE DENIED’** That is the most famous quote from the philosophers and scholars about the Indian judiciary. It has been considered over the period to be inefficient. Whole issues of undertrials who basically create a human rights issue. Prime Minister Narendra Modi talked about almost more than 3.7 lakh undertrial prisoners. Narendra Modi pointed out that the for want speedy decision in their cases and requested the chief ministers and judges to focus on resolving this problem as it has been disturbing people’s sensitivity. He also talked about mission freedom, to work for the

¹ Bhasin, R., Khan, A., & Yelluru, M. (2015, May 8). Salman Khan gets 5 yrs in jail, then interim bail; won’t go to jail till May 8. *The Indian Express*. <https://indianexpress.com/article/india/india-others/salman-khan-verdict-actor-gets-bail-hours-after-being-sentenced-to-five-years/>

² PM inaugurates Joint Conference of Chief Ministers of States and Chief Justices of High Courts. (n.d.). <https://pib.gov.in/PressReleasePage.aspx?PRID=1821552>

cause of freedom who are languishing in jails for pretty crimes without even beginning trials. A call was given to PM Modi and duly supported by **Chief Justice of India, Justice N V Ramana**³. The conference aimed to coordinate efforts for speedy justice in India. In 1953, the Indian government and chief justice believed that judges' efficiency was best achieved with support from administration, the center, and the state. The center could provide the most monetary support for court operations. The main problem comes with one of the hands of the judiciary is basically the police department. **Unless and until the police department works efficiently judiciary cannot do its work.** Indiscriminate arrests by the police have led to violations of human rights, with many prisoners languishing in jail due to inadequate investigations and late charge sheet filing. This serious issue requires state governments and the judicial system to work together. The issue began in 1953 as a conference between stakeholders, including the judicial and executive sides, to resolve issues. The court recognizes the problem but only serves as an edge service, which is excruciating. It is crucial for the state governments and judicial system to work together to address this issue⁴.

Overcrowding is a major issue in Indian prisons. According to provisional figures cited by the government in Rajya Sabha, there are now just 1,306 functioning jails in India, having 4,88,511 prisoners and an actual capacity of jails of 4,14,033 prisoners. The jail occupancy rate jumped from 114% in 2016 to 119% in 2022. There were 4.33 lakh inmates in 2016, present the number jumped to 4,78 lack. The Supreme Court has expressed concerns about overcrowding in prisons across the country. In some cases, beyond 150 percent of the capacity, and asked all the high courts to consider the issue as it involves a **“violation of human rights”**. The court has requested the chief justices of high courts to take up the matter as a **suo-motu writ petition** (‘on its own motion’). It institutes a case on its own accord by taking cognizance of a public issue. At times, the court’s Suo moto actions will be based on letter petitions, media reports, etc. Delhi jails are overcrowded, with 175 prisoners living in a capacity of 100. Despite a sanctioned capacity of 6,250, 13,500 prisoners are lodged, with 1000-1100 attending courts daily. The pendency of court cases is a primary reason for overcrowding. In India, the

³ Deevika. (2022, April 15). Indian judiciary is overburdened, sufficient courts and infrastructure can bring justice: CJI Ramana. *Asianet News Network Pvt Ltd*. <https://newsable.asianetnews.com/india/indian-judiciary-is-overburdened-sufficient-courts-and-infrastructure-can-bring-justice-cji-ramana-dnm-radfxv>

⁴ Ajay Bahl, Vijayendra Pratap Singh, Ajay Bahl, & Vijayendra Pratap Singh. (2020). Reforming the judicial process in India: Principle-based solutions. *Bar And Bench - Indian Legal News*. <https://www.barandbench.com/columns/reforming-the-judicial-process-in-india-principle-based-solutions>

prevalence of HIV, STDs, Hepatitis B, and C is 2 to 10 times higher than the general population, with UP having a rate of 168 percent.

The Supreme Court criticized jail conditions, stating prisoners should not be kept like animals. The Ministry of Home Affairs drafted a model prison manual in 2016 and sent it to all states and union territories. The center is working on an 'open prison', with 22 open prisons in 12 states, focusing on minimum security and inmate self-discipline. A uniform rule for open correctional institute administration has been framed. After a major fire broke out **in Venezuela's police station** jail, killing 68 people, it is time to look at the jails in India. Indian jails are overcrowded on top of the staff shortage and corruption is plaguing Indian jails⁵.

THE UNITED NATIONS PRISONS: The United Nations standard minimum rules for the treatment of prisoners, popularly known as the **Nelson Mandela Rules**, laid down the objectives of open prisons stating, Prisons without physical security against escape, relying on inmate self-discipline, offer the most favorable conditions for the rehabilitation of carefully selected prisoners.

II. WHAT ARE EXISTING LEGAL SOLUTIONS REFORMS AND RECOMMENDATIONS FOR IMPROVING THE INDIAN PRISON SYSTEM?

- **Judicial reform 1:** Fill vacancies and appoint more judges if all sanctioned judges and staff were to be appointed the mounting pendency could be history
- **Judicial reform 2:** Use technology to digitalize courts and streamline legal processes this could end the problem of bench fixing influential people are able to get their cases heard on priority cases of weak and poor undertrials are adjourned endlessly and this has to end. Artificial intelligence can help reduce the backlog of pending cases; it was said to **Union Law Minister Kiren Rijju**. Technology can be used to develop an algorithm where the first and first out basis is followed in listing cases not power and influence⁶.
- **Judicial reform 3:** More **virtual courts** can save a lot of time and money the supreme court launched an e-committee back in 2005 the aim was to hold virtual hearings, but for the last 17 years this has been done as an exception only the pandemic changed things a bit courts did go

⁵ Núñez, L. G. (n.d.). *Behind the scenes of Venezuela's deadly prison fire*. The Conversation. <https://theconversation.com/behind-the-scenes-of-venezuelas-deadly-prison-fire-94276>

⁶ Mathur, A. (2022, July 30). AI, technology and virtual courts: Legal services meet discuss future of Justice system in India. *India Today*. <https://www.indiatoday.in/law/story/ai-technology-virtual-courts-legal-services-meet-discusses-future-justice-system-india-1981866-2022-07-30>

virtual but only for select cases it is time to do more of this. Virtual courts: a chance to change the system. An influential parliamentary group last year supported virtual courts. It was mentioned that 'digital justice' is more affordable and quicker⁷.

- **Judicial reform 4:** Promote **Alternative Dispute Resolution in other words settle disputes outside courts**, through arbitration, mediation, and negotiation the concept is already laid down in the code of civil procedure but it is not used enough. Alternative dispute resolution: the way forward for commercial disputes. Here, both the lawyers, as well as the judicial officers should conduct public seminars, and conferences, either virtually or physically to ensure that the consumers of justice are attuned to the mediation process. Using this to solve minor disputes can lower the burden on courts.
- **Judicial reform 5:** central tribunals can be made the last resort in the judicial process they already exist but their orders can be challenged if we limit the scope of appeal for certain matters and let the tribunals take the final call, can ensure that cases do not get dragged endlessly you can challenge each one of these solutions. Dispensation of justice by regular courts. By dealing with disputes related to the environment, the armed forces, tax, and administrative issues, they are meant to take some load off India's overburdened courts. Clearly, it is not happening at the necessary pace. Everything has moved on the fast track, passport delivery, travel booking, bank transactions, medical services, in every field we have used technology to speed up processes so why should courts remain the exception? Accountability improves systems and as a country, we have to be accountable to the millions of people languishing in jails. **wasting their lives or waiting for justice** unless these judicial reforms are not done as fast.

III. WHAT RIGHTS DO UNDERTRIAL PRISONERS HAVE AND RELEVANT CASE LAWS?

The purpose of the criminal justice system in any country is to protect not only the rights of the victims but also the convicts, prisoners, and undertrials.

- Prisoners who are awaiting trial are known as undertrial defendants. Despite the fact that they are nominally in judicial custody, they are essentially housed in the same prison as the people who have been found guilty.

⁷ The advantages and challenges of virtual courts in India. (2020, September 13). Parliamentary Panels | Supreme Court | Law Ministry | High Court. <https://www.manoramayearbook.in/india/special-articles/2020/09/13/virtual-courts-in-india.html>

- They are not capable of being deprived of their basic human rights.
- According to the 78th report of the Law Commission of India (1979), undertrial prisoners or pre-trial detainees refer to unconvinced prisoners, who have been detained in prison during the period of investigation, inquiry, or trial for the offenses they are accused of have committed⁸.

However, according to reports from the National Crime Records Bureau, undertrial prisoners constitute almost 60 percent to 70 percent of the prison population across many years which points to an underlying issue regarding the rights of the prisoners and whether it is fair to keep them in prison for so long despite a lack of conviction.

Section 436 A of the Criminal Procedure Code: The *Moti Ram and Others v. State of Madhya Pradesh* case established that imprisonment is an exception to bail, as it would be an injustice to keep a prisoner awaiting trial for more than half of the maximum sentence unless the crime carries the death penalty. This ruling was based on the court's decision that denying bail until the trial was over would be unjust⁹.

According to a report released by the (NCRB), there was a 2% increase in the number of undertrial prisoners from 2019 to 2021. The Law Commission of India recommended that provisions on bail in the CrPC are to be amended to facilitate a reduction in the number of undertrial prisoners in prison

Human Rights of Prisoners in UDHR: Article 3-11 of the **Universal Declaration of Human Rights**, 1948 guarantees under-trial rights, including liberty, life, no cruel treatment, arbitrary arrest, effective court remedies, and presumption of innocence, which India must uphold as a signatory of the Universal Declaration of Human Rights.

Rights of under-trial prisoners in the Indian constitution: Within 24 hours after his arrest, every person who is arrested has a right to appear before the magistrate. This right is derived from Section 57 of the CrPC and Article 22(2) of the Indian Constitution.

Right to engage lawyers: The Indian Constitution guarantees free legal assistance to impoverished individuals being tried in secret, as per Article 39A. This is due to the state's

⁸ *The Human Right Of Under Trail Prisoners*. (n.d.). <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trail-prisoners.html>

⁹ *Moti Ram & Ors vs State Of M.P* on 24 August, 1978 AIR 1594, 1979 SCR (1) 335

obligation to provide such assistance through appropriate legislation or programs, despite the majority being impoverished.

Right to speedy justice: In the case of *Hussainara Khatoon v. State of Bihar* the Supreme Court of India held that speedy justice is a fundamental right within Article 21 of the Indian Constitution. All the persons detained in prison have a right to trial within a reasonable time¹⁰.

In ***Sheela Barse V. State of Maharashtra***, The abuse of female detainees held in police facilities was addressed by the top court. It issued a number of directives to improve the living circumstances for people detained in police cells and to ensure that those who had been imprisoned, particularly women, received proper protection.

Right to be informed and to meet Family members and friends: The Supreme Court ruled in *Sunil Batra v. Delhi Administration* that solitary confinement violates prisoners' right under Article 21 of the Constitution, highlighting the need for their right to visits from friends and family, which are built into the Constitution.

Right to Compensation for Illegal Detention: Article 14 (6) of ICCPR, 1966: A person who has suffered punishment as a result of such conviction shall be compensated according to law ***Rudal Shah v. State of Bihar 1983***, monetary compensation for citizens.

No handcuffing: In ***Perm Shankar Shukla v Delhi Administration***: it was held that in the absence of justifying circumstances, an arrested person or under-trial prisoners should not be subjected to handcuffing.

Right against Narco analysis or brain mapping: *Salvi and ORS v. State of Karnataka*: According to a Supreme Court ruling, using polygraph tests and narcoanalysis on suspects, witnesses, and accused people without getting their permission is against the law and a violation of their right to privacy¹¹.

IV. JUSTICE KEEPS MOVING AT A SNAIL'S PACE, ARE THE UNDERTRIAL PRISONERS' VICTIMS OF A SLOW JUDICIAL PROCESS?

No one is GUILTY until proven

¹⁰ *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 98.

¹¹ *Salvi and ORS v. State of Karnataka* AIR 2010 SC 1974

There are about 73,000 cases pending before the Supreme Court of India and about 44 million cases in all Indian courts, out of these 8,00,000 cases pending for more than a decade, 1 lakh cases have been pending for 20 years and almost 2,000 cases have been on hold for 50 years. They say no one is guilty until proven yet we have thousands of undertrials languishing in jails. According to a January 2022 report, nearly 76 percent of the Indian prison population is made up of undertrials. That is 3 in every 4 prisoners, two years back another report was released it said that there were more than 1200 undertrials who had been in jail for a period that would make up half the sentence their alleged offenses qualify them for¹². Some of them are even eligible for release but are still in jail. What is worse is that 49 of these undertrials are between 18 to 30 years of age which is nearly half of undertrial inmates in India Young men and women languish in jails even though they have not been pronounced guilty.

NITI Aayog (National Institution for Transforming India)

India's central planning body, NITI Aayog, has revealed that clearing the backlog of judicial cases will take over 324 years if fresh cases are not filed. In the last two years, India has added 23 new cases per minute to its pending list. This has a negative impact on the country's economy, costing around 0.5% of its GDP annually, or around 50,000 crore rupees. The issue has been raised by India's highest judicial officers and government officials, with President Ramnath Kovind addressing the judicial logjam in November 2021, union law minister Kiren Rijiju expressing concerns about the pendency of cases in lower courts, and former Chief Justice S.A Bobde acknowledging the problem.

Reasons behind the legal logjam

There are not enough judges, not enough judicial officials, insufficient investigations, poor physical infrastructure, and a lack of clear mandates. Most Indian courts do not have basic facilities, 26 percent of courts have no separate toilets for women, and 16 percent of courts do not have any toilets at all. Only 54 percent of courts have clean drinking water. Only 27 percent of the courtrooms are digitized means they have computers on a judge's dice the rest do not. 32 percent of courts have a Record room and a storage facility for journals and documents the rest of them do not. As of February 2020, only 21% of judicial officer posts were filled, with over 5,000 vacancies, mostly in states. There are also 400 vacant positions for judges across the 25 high courts in India. Lower courts have 5,000 vacancies, leaving India with one

¹² Moneycontrol.com. (n.d.). *44 million pending court cases: How did we get here?* Moneycontrol. <https://www.moneycontrol.com/news/trends/features/44-million-pending-court-cases-how-did-we-get-here-7792511.html>

subordinate court judge for over 50,000 people. India spends only 0.08 of its GDP on the judiciary, covering salaries, allowances, and operations, leaving little for capacity building and infrastructure. Nearly 20 of the judges in India do not have proper courtrooms. The backlog is not solely due to resources, but also a culture of seeking adjournments or luxurious litigation. Wealthy individuals attempt to frustrate the courts by making numerous appeals from district, high, or supreme courts. A study by the Vidhi Centre to Legal Policy (VCLP) found that in 91% of cases delayed over two years, adjournments were sought and granted.

Fast track courts (FTCs)

In the year 2000, the Indian judiciary tried putting an end to this setup of 1700 fast-track courts across the country. Fast-track courts are set up by the state governments in consultation with the high courts. The 11th Finance Commission had recommended a scheme for the creation of 1734 fast-track courts in the country for the disposal of long pending cases. The idea was to deliver speedy justice but for more than two decades fast-track courts have been a sluggish affair in New Delhi fast track court takes 122 days on average to wrap up a case compared to regular court takes 133 days which means the fast-track courts actually not fast they defeat the purpose according to the National crime record bureau data 29,000 cases resolved by these courts in 2019 nearly 81 percent of them had been on trial for at least 10 years¹³. This is the denial of justice it is undermining the credibility of India's judiciary it is insulting the constitutional value of human dignity, Yet without judges to provide prompt justice, millions of cases languish in courtroom

According to the Law Commission of India's 268th Report, the law enforcement official who arrests the suspect must notify them of all legal options, including whether they can petition for bail¹⁴.

- Bail requests must be resolved by subordinate courts within a week.
- Bail should be available to those in need without requiring them to deposit a guarantee.
- A Panchayat Bail Fund should be established to pay the bail amount for ongoing cases.
- To ensure the prompt release of defendants who are awaiting trial, Section 436A of the CrPC should be changed.

¹³ Salve, P., Salve, P., & Indiaspend. (2020). What's slowing down India's Fast-Track courts. *Indiaspend*. <https://www.indiaspend.com/police-judicial-reforms/whats-slowing-down-indias-fast-track-courts-700397>

¹⁴ [Revamping Bail System - 268th Report of the Law Commission of India on Bail Reforms - LawLex.Org](#)

- For offenses up to seven years in length, defendants who have served one-third of their maximum sentence should be set go.
- Bail is available for those who are accused of crimes that carry a sentence of more than seven years in prison and are awaiting trial.

CONCLUSION

There are so many undertrial prisoners who are left in jails without any legal help and remedy. Urge the district judges to use their position in the district-level undertrial review committee and speed up the release from the jails. They cannot be referred to as guilty because there is no evidence to support their guilt. The vast majority of people being held without charge are poor and unable to post bond to be released. Their legal rights, such as the right to free legal assistance, the right to choose their own attorney, the ability to post bail, etc., are not explained to them.

The number of prisoners awaiting trial can be reduced by accelerating trials, streamlining bail processes, and regularly reviewing undertrial cases. Convicts should be housed in a different facility, as prisons have historically been a place for change. The criminal justice system's main goal is to punish offenders. The rise of undertrials is primarily due to the ongoing delay in holding trials and delivering justice. Undertrial defendants receive justice after enduring punishment and incarceration, even without being found guilty. This injustice is a disgrace to the nation's justice system, and more efforts should be made to alleviate the situation for Indian prisoners awaiting trial.

“Injustice anywhere is a threat to justice everywhere.”

This research gives an overview of the law on problems and rights of undertrials in India. Research has been made for the purpose of creating legal awareness and has no intention to render advice based on facts of a specific case.

BIBLIOGRAPHY

1. ¹ Núñez, L. G. (n.d.). *Behind the scenes of Venezuela's deadly prison fire*. The Conversation. <https://theconversation.com/behind-the-scenes-of-venezuelas-deadly-prison-fire-94276>
2. ¹ (2021, December 1). *Overcrowding prisons a violation of human rights, says Supreme Court*. The Hindu. <https://www.thehindu.com/news/national/overcrowded-prison-involves-violation-of-human-rights-says-worried-supreme-court/article61836654.ece>
3. ¹ Bhasin, R., Khan, A., & Yelluru, M. (2015, May 8). *Salman Khan gets 5 yrs in jail, then interim bail; won't go to jail till May 8*. *The Indian Express*. <https://indianexpress.com/article/india/india-others/salman-khan-verdict-actor-gets-bail-hours-after-being-sentenced-to-five-years/>
4. ¹ *PM inaugurates Joint Conference of Chief Ministers of States and Chief Justices of High Courts*. (n.d.). <https://pib.gov.in/PressReleasePage.aspx?PRID=1821552>

5. ¹ Deevika. (2022, April 15). Indian judiciary is overburdened, sufficient courts and infrastructure can bring justice: CJI Ramana. *Asianet News Network Pvt Ltd*. <https://newsable.asianetnews.com/india/indian-judiciary-is-overburdened-sufficient-courts-and-infrastructure-can-bring-justice-cji-ramana-dnm-radfxv>
6. ¹ Ajay Bahl, Vijayendra Pratap Singh, Ajay Bahl, & Vijayendra Pratap Singh. (2020). Reforming the judicial process in India: Principle-based solutions. *Bar And Bench - Indian Legal News*. <https://www.barandbench.com/columns/reforming-the-judicial-process-in-india-principle-based-solutions>
7. ¹ Mathur, A. (2022, July 30). AI, technology and virtual courts: Legal services meet discuss future of Justice system in India. *India Today*. <https://www.indiatoday.in/law/story/ai-technology-virtual-courts-legal-services-meet-discusses-future-justice-system-india-1981866-2022-07-30>
8. ¹ The advantages and challenges of virtual courts in India. (2020, September 13). Parliamentary Panels | Supreme Court | Law Ministry | High Court. <https://www.manoramayearbook.in/india/special-articles/2020/09/13/virtual-courts-in-india.html>
9. ¹ *The Human Right Of Under Trail Prisoners*. (n.d.). <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trail-prisoners.html>
10. ¹ Moti Ram & Ors vs State Of M.P on 24 August, 1978 AIR 1594, 1979 SCR (1) 335
11. ¹ Hussainara Khatoon v. State of Bihar (1980) 1 SCC 98.
12. ¹ Salvi and ORS v. State of Karnataka AIR 2010 SC 1974
13. ¹ Moneycontrol.com. (n.d.). *44 million pending court cases: How did we get here?* Moneycontrol. <https://www.moneycontrol.com/news/trends/features/44-million-pending-court-cases-how-did-we-get-here-7792511.html>
14. ¹ Salve, P., Salve, P., & Indiaspend. (2020). What's slowing down India's Fast-Track courts. *Indiaspend*. <https://www.indiaspend.com/police-judicial-reforms/whats-slowing-down-indias-fast-track-courts-700397>
15. ¹ [Revamping Bail System - 268th Report of the Law Commission of India on Bail Reforms - LawLex.Org](https://www.lawlex.org/india/revamping-bail-system-268th-report-of-the-law-commission-of-india-on-bail-reforms)