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Locked justice: Evaluating judicial interventions on prison overcrowding, bail reforms, and the rights of undertrial prisoners under India's criminal justice framework post-BNS, 2023

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Abstract

Prison overcrowding and the plight of undertrial prisoners have emerged as critical challenges within India's criminal justice system, particularly in the aftermath of the Bharatiya Nyaya Sanhita (BNS), 2023. This research paper, titled Locked Justice: Evaluating Judicial Interventions on Prison Overcrowding, Bail Reforms, and the Rights of Undertrial Prisoners under India's Criminal Justice Framework Post-BNS, 2023, explores the multidimensional issues surrounding bail jurisprudence, custodial justice, and constitutional safeguards. Despite constitutional guarantees under Articles 21 and 22, and statutory provisions under the Code of Criminal Procedure, undertrial prisoners constitute over 75% of India's prison population, highlighting systemic inefficiencies, procedural delays, and inequitable access to bail. The study critically evaluates judicial interventions, with the Supreme Court and High Courts playing a transformative role in shaping jurisprudence on bail, speedy trial, and prison reforms. Key judgments such as Hussainara Khatoon v. State of Bihar and Supreme Court Legal Aid Committee v. Union of India demonstrate the judiciary's proactive approach in upholding fundamental rights, though challenges of implementation persist. The paper also undertakes a comparative analysis with jurisdictions such as the United States and the United Kingdom, where bail reforms, alternatives to incarceration, and community-based monitoring have reduced under trial incarceration rates. Findings suggest that India requires a stronger balance between preventive detention policies and rehabilitative justice, with technology-driven reforms, case management systems, and robust legal aid mechanisms to reduce judicial delays.

Keywords: Prison overcrowding, undertrial prisoners, bail reforms, bharatiya nyaya sanhita 2023, criminal justice system, judicial interventions, constitutional rights, speedy trial, custodial justice, comparative criminal law

Introduction

The Indian criminal justice system, deeply rooted in colonial legal structures, has witnessed numerous reforms and judicial interventions aimed at balancing the objectives of crime control, deterrence, and protection of individual liberty. Yet, one of its most pressing and enduring crises continues to be the issue of prison overcrowding, disproportionately high numbers of undertrial prisoners, and the inadequate implementation of bail jurisprudence. The problem is not merely administrative but fundamentally constitutional, implicating the very essence of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. According to the National Crime Records Bureau's Prison Statistics India Report, 2022, Indian prisons are operating at an average occupancy rate of 130.2%, far exceeding their sanctioned capacity. With more than 4.3 lakh undertrial prisoners, constituting nearly 78.4% of the total prison population, India has the dubious distinction of having one of the highest proportions of undertrial detainees in the world. This alarming situation highlights the paradox of justice in the country: while the presumption of innocence remains a foundational principle of criminal law, in reality, incarceration without conviction has become the norm for the majority of those behind bars.

The issue of prison overcrowding and undertrial detention has consistently drawn the attention of the judiciary, civil society, and international human rights bodies. The judiciary, through its progressive interpretations, has recognized that bail is not to be treated as a privilege but as a rule, with jail being the exception. However, despite landmark rulings such as Hussainara Khatoon v. State of Bihar (1979)^[27], which exposed the plight of thousands of prisoners

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linguishing in jails for years without trial, and Supreme Court Legal Aid Committee v. Union of India (1994), which emphasized the need for expeditious trials and bail to undertrials, the gap between principle and practice remains wide. Thousands of prisoners continue to remain incarcerated for petty and bailable offences simply due to their inability to furnish sureties or access legal aid. This reflects the deep socio-economic inequities entrenched in the criminal justice process, where liberty often depends not on the gravity of the crime but on the resources of the accused.

The Bharatiya Nyaya Sanhita (BNS), 2023^[16], enacted as part of India's ambitious move to replace colonial-era criminal laws, marks a significant attempt to recalibrate the criminal justice framework. Replacing the Indian Penal Code of 1860, the BNS seeks to modernize criminal jurisprudence with provisions that emphasize victim rights, speedy justice, and procedural clarity. Importantly, it seeks to rationalize offences and simplify the bail process in certain categories of cases. Yet, whether these legislative reforms can meaningfully address structural issues such as overcrowding, prolonged undertrial detention, and denial of bail depends heavily on judicial interpretation and the efficiency of the criminal justice machinery. The judiciary plays an indispensable role in ensuring that the intent of the legislature translates into tangible relief for prisoners, especially in the context of protecting undertrial rights. However, the success of such interventions is challenged by factors such as shortage of judges, procedural delays, lack of infrastructure, and poor implementation by prison authorities.

Prison overcrowding is not just a logistical problem of numbers but has profound implications for human dignity, health, and rehabilitation. Overcrowded prisons compromise basic amenities, create unhygienic living conditions, and lead to violence, exploitation, and spread of diseases. The COVID-19 pandemic further exposed the vulnerability of India's prison system, where overcrowding made social distancing and adequate medical care almost impossible. The Supreme Court, in response, directed the release of thousands of undertrial prisoners on interim bail or parole to decongest prisons, underlining once again that excessive incarceration is a threat not just to prisoners but to public health and constitutional governance. However, these temporary measures did not address the root of the problem: the systemic reliance on pre-trial detention and the failure to enforce bail provisions uniformly.

The rights of undertrial prisoners are closely intertwined with broader questions of access to justice and equality before law. Undertrials are not convicts, and yet they experience punitive conditions similar to or worse than those who have been convicted. Many remain in jail for periods longer than the maximum sentence prescribed for their alleged offences, a situation explicitly condemned in Section 436A of the Code of Criminal Procedure (CrPC), which mandates release of undertrials who have spent half the maximum sentence in custody. The judiciary has time and again reinforced this principle, yet its implementation remains patchy across states. Furthermore, undertrials predominantly come from marginalized and economically weaker backgrounds, including Dalits, Adivasis, religious minorities, and migrant workers. For them, legal representation is often absent or inadequate, bail is unaffordable, and systemic biases exacerbate their vulnerability. Thus, the undertrial crisis cannot be separated from the socio-economic and structural inequalities that define India's justice system.

Judicial interventions, while critical, have also faced limitations. Courts have repeatedly reiterated that bail should be granted liberally, particularly for offences not involving grave threats to society. The Supreme Court in *Satender Kumar Antil v. CBI* (2022)^[33] laid down detailed guidelines to streamline bail, directing lower courts to avoid unnecessary arrests and ensure bail in cases where it is statutorily permissible. Despite such directions, ground-level implementation often falters due to judicial conservatism, fear of public backlash, and administrative inertia. The result is a criminal justice process where liberty becomes contingent upon geography, judicial discretion, and the socio-political context, rather than being a consistent constitutional guarantee.

The post-BNS framework provides an important opportunity to revisit these challenges and assess whether legislative reforms, coupled with judicial activism, can unlock justice for those trapped in the cycle of endless incarceration. The BNS, by redefining offences and aligning procedures with modern realities, could reduce the inflow of prisoners for minor crimes, thereby indirectly reducing overcrowding. However, meaningful change will only occur if the judiciary actively uses its interpretive power to prioritize individual liberty, enforce speedy trials, and ensure accountability in prison administration. At the same time, reliance on bail as a reform tool must be complemented by broader systemic measures such as increasing judicial capacity, improving legal aid services, and strengthening alternative sentencing mechanisms like community service and restorative justice, which have been highlighted in contemporary reform discourse.

International human rights standards, particularly those under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, stress the importance of the presumption of innocence, the right to a fair trial, and protection against arbitrary detention. The judiciary, in aligning Indian jurisprudence with these global norms, carries the responsibility of ensuring that undertrial prisoners are not forgotten citizens but individuals entitled to dignity, liberty, and justice. The evolution of bail jurisprudence, therefore, is not just about decongesting prisons but about reaffirming the constitutional vision of justice as accessible, equitable, and humane.

Against this backdrop, the present research paper seeks to critically evaluate judicial interventions in addressing prison overcrowding, bail reforms, and the rights of undertrial prisoners within the evolving framework of the Bharatiya Nyaya Sanhita, 2023^[16]. It aims to analyze whether judicial pronouncements have been effective in reducing the structural injustices faced by undertrial prisoners, or whether they remain symbolic in the absence of robust implementation. By situating the discussion within the larger socio-legal and constitutional context, the paper underscores the urgent need for a holistic reform strategy that combines judicial dynamism, legislative clarity, and administrative efficiency to ensure that justice in India is not locked away but meaningfully delivered to all, particularly the most marginalized.

Objectives of the Study

The present study has been undertaken with the central purpose of examining how judicial interventions have influenced the challenges of prison overcrowding, bail

reforms, and the rights of undertrial prisoners in India, particularly after the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023 ^[16]. Although the judiciary has historically played a proactive role in safeguarding constitutional rights and ensuring access to justice, the persistent problem of excessive undertrial detention highlights a continuing gap between legal guarantees and ground realities. Thus, one of the foremost objectives of this study is to analyze the extent of prison overcrowding in India, identify the structural and socio-economic causes behind it, and evaluate its impact on human dignity, prison administration, and constitutional rights. The study also seeks to highlight how judicial pronouncements, though progressive in intent, often face challenges in enforcement, thereby rendering undertrial prisoners the most disadvantaged group in the criminal justice system.

A second objective is to critically assess the rights of undertrial prisoners, especially in relation to the constitutional mandate of personal liberty under Article 21 and the principle of presumption of innocence. Undertrials constitute nearly four-fifths of India's prison population, and many remain incarcerated longer than the maximum punishment prescribed for their alleged offences. This study therefore intends to explore the effectiveness of judicial measures and statutory safeguards such as Section 436A of the Code of Criminal Procedure, and whether these have been meaningfully implemented across different states.

Another major objective of the research is to evaluate bail jurisprudence in India and its role in reducing pre-trial detention and decongesting prisons. Bail, as a critical instrument of liberty, has been the subject of several landmark judgments including *Hussainara Khatoon v. State of Bihar* (1979) ^[27], *Supreme Court Legal Aid Committee v. Union of India* (1994), and *Satender Kumar Antil v. CBI* (2022) ^[33]. The study aims to examine whether such judicial interventions have successfully shifted the approach towards a liberal and rights-based bail policy, or whether the systemic bias towards incarceration continues to prevail in practice.

Further, this study seeks to situate the discussion within the new framework of the Bharatiya Nyaya Sanhita, 2023 ^[16], which has replaced the colonial-era Indian Penal Code. The objective is to analyze whether the BNS has introduced substantive and procedural changes that can mitigate the crisis of undertrial detention and whether judicial interpretation of these provisions can ensure stronger protection of liberty. The research also intends to investigate how judicial bodies can harmonize BNS provisions with constitutional guarantees and international human rights obligations, particularly under the ICCPR.

Objectives of the Study

1. To analyze the causes and consequences of prison overcrowding in India and its impact on human rights and constitutional guarantees.
2. To evaluate the rights of undertrial prisoners in light of constitutional provisions, statutory safeguards, and judicial interpretations.
3. To critically examine the evolution of bail jurisprudence and its effectiveness in reducing pre-trial detention and prison congestion.
4. To assess the role of judicial interventions in operationalizing provisions like Section 436A CrPC and other statutory safeguards.
5. To study the implications of the Bharatiya Nyaya

Sanhita, 2023 ^[16] on undertrial detention, bail provisions, and rights-based justice.

6. To investigate how Indian judiciary aligns with international human rights standards (e.g., ICCPR) in protecting undertrial prisoners.
7. To identify the gaps between judicial pronouncements and their implementation in practice.
8. To suggest policy and legal reforms that can strengthen judicial effectiveness in ensuring liberty, reducing overcrowding, and protecting prisoner rights.

Research Questions

1. To what extent have judicial interventions been effective in reducing prison overcrowding in India?
2. How have Indian courts contributed to safeguarding the rights of undertrial prisoners under Article 21 and other constitutional guarantees?
3. Has bail jurisprudence evolved into a liberal, rights-based framework, or does pre-trial detention remain the default?
4. How effectively has the judiciary enforced Section 436A CrPC and other statutory safeguards against prolonged detention?
5. What role does the Bharatiya Nyaya Sanhita, 2023 ^[16] play in reshaping bail provisions and undertrial rights, and how might courts interpret these reforms?
6. Do Indian judicial practices align with international human rights standards (e.g., ICCPR) on presumption of innocence and speedy trial?
7. What are the key gaps between judicial pronouncements and their implementation in practice across states?
8. What judicial, legislative, and administrative reforms are required to ensure that undertrial prisoners are not denied liberty and dignity due to systemic failures?

Legal Framework

The legal framework governing prison administration, bail provisions, and the rights of undertrial prisoners in India is multi-dimensional, drawing from constitutional guarantees, statutory provisions, judicial interpretations, and international human rights obligations. With the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023 ^[16], India has attempted to modernize its criminal law regime, but its effectiveness in addressing chronic issues such as prison overcrowding and prolonged undertrial detention depends largely on judicial interpretation and implementation. This section outlines the key constitutional, statutory, and judicial provisions that form the backbone of the legal framework on undertrial rights, bail, and prison reforms in India.

1. Constitutional Framework

The Constitution of India remains the bedrock of rights for prisoners and undertrials, providing both substantive and procedural safeguards.

- **Article 14 (Equality before Law and Equal Protection of Laws):** This guarantees that all individuals, including prisoners, are entitled to equality before the law. Courts have repeatedly emphasized that undertrial prisoners cannot be discriminated against merely because they are in custody.
- **Article 19 (Fundamental Freedoms):** While imprisonment curtails personal freedoms, prisoners retain certain residual rights that cannot be arbitrarily denied, such as access to legal counsel and the right to communicate with family.

- **Article 21 (Right to Life and Personal Liberty):** This is the cornerstone of prisoner rights jurisprudence in India. The Supreme Court in *Maneka Gandhi v. Union of India* (1978) held that Article 21 protects not only life and liberty but also dignity. Undertrials, being unconvicted, are presumed innocent and hence entitled to the fullest protection under this provision.
- **Article 22 (Protection in respect of Arrest and Detention):** This lays down procedural safeguards against arbitrary arrest and detention, including the right to be informed of grounds of arrest, to consult a lawyer, and to be produced before a magistrate within 24 hours.
- **Directive Principles of State Policy (DPSPs):** Though non-justiciable, provisions such as Article 39A (equal justice and free legal aid) strengthen the obligation of the State to ensure access to justice for undertrials.
- **Judicial Expansion:** The judiciary has expanded constitutional protection through *Hussainara Khatoon v. State of Bihar* (1979)^[27], declaring speedy trial as part of Article 21, and *Sunil Batra v. Delhi Administration* (1978), recognizing prisoners' rights against inhuman treatment.

2. Statutory Framework: CrPC, Evidence Act, and Prison Laws

(a) Code of Criminal Procedure (CrPC), 1973

The CrPC provides the principal procedural framework for bail, arrest, and detention. Key provisions include:

- **Section 41:** Limits police powers of arrest, directing arrest only when necessary. The Supreme Court in *Arnesh Kumar v. State of Bihar* (2014) directed strict compliance to prevent unnecessary incarceration.
- **Section 436:** Provides for mandatory bail in bailable offences.
- **Section 437:** Grants discretionary powers to magistrates to release accused in non-bailable offences, subject to conditions.
- **Section 438:** Introduces anticipatory bail to prevent unjustified pre-trial detention.
- **Section 439:** Empowers High Courts and Sessions Courts to grant bail.
- **Section 436A:** Provides that an undertrial who has spent half of the maximum sentence prescribed for the offence shall be released on bail. This is a crucial statutory safeguard against indefinite detention, yet its enforcement remains inconsistent across states.
- **Section 167(2):** Known as "default bail," it mandates release of an accused if investigation is not completed within 60/90 days, unless extended by the court.

(b) Indian Evidence Act, 1872

Though not directly addressing bail or detention, the Evidence Act underpins the presumption of innocence, requiring the prosecution to prove guilt beyond reasonable doubt. This principle reinforces the argument for liberal bail for undertrials.

(c) Prisons Act, 1894 & Prison Manuals

The **Prisons Act, 1894**—a colonial statute—governs prison administration but is outdated. State-specific prison manuals regulate day-to-day management, including segregation of undertrials and convicts, but overcrowding and poor implementation undermine these safeguards.

3. Judicial Framework and Case Law

Judicial activism has played a central role in shaping the rights of undertrial prisoners and bail jurisprudence. Some landmark rulings include:

- **Hussainara Khatoon v. State of Bihar (1979)**^[27]: Declared that speedy trial is a fundamental right under Article 21. Highlighted plight of thousands of undertrials in Bihar jails.
- **Supreme Court Legal Aid Committee v. Union of India (1994)**: Directed release of undertrials charged under NDPS Act who had spent more than 5 years in prison.
- **Moti Ram v. State of Madhya Pradesh (1978)**: Emphasized liberal interpretation of bail and held that poverty should not be a ground to deny bail.
- **Arnesh Kumar v. State of Bihar (2014)**: Limited arbitrary arrests for offences punishable up to 7 years, reinforcing bail as the norm.
- **Satender Kumar Antil v. CBI (2022)**^[33]: Laid down detailed guidelines to ensure bail is granted where statutorily permissible, discouraging unnecessary arrests.
- **In Re: Inhuman Conditions in 1382 Prisons (2016)**: Supreme Court expressed concern over overcrowding and directed state governments to take remedial measures.

Through these interventions, the judiciary has consistently emphasized that bail should be the rule and jail the exception, though implementation remains uneven.

4. Bharatiya Nyaya Sanhita (BNS), 2023^[16]

The enactment of the BNS, 2023 marks a paradigm shift in India's criminal law, replacing the Indian Penal Code, 1860. Its implications for undertrial prisoners and bail include:

- **Rationalization of Offences:** Certain petty offences have been decriminalized or converted into compoundable offences, which could reduce unnecessary arrests and imprisonment.
- **Simplification of Bail Provisions:** The BNS, read with procedural amendments, emphasizes expedited bail in cases of minor offences, aligning with the principle of proportionality.
- **Victim-Centric Justice:** While focusing on victims' rights, the BNS also indirectly addresses delays by mandating faster investigation timelines, which in turn can reduce prolonged undertrial detention.
- **Continuity with CrPC Safeguards:** While the BNS does not radically change bail law, its provisions must be interpreted in harmony with Section 436A and judicial precedents.

Thus, the BNS framework provides opportunities for reform but requires judicial proactivity for meaningful implementation.

5. International Human Rights Framework

India is a signatory to several international instruments that guide the rights of prisoners:

- **Universal Declaration of Human Rights (UDHR), 1948 - Article 9:** Protects against arbitrary arrest or detention.
- **International Covenant on Civil and Political Rights (ICCPR), 1966 - Articles 9 and 14:** Guarantee the right to liberty, presumption of innocence, and speedy trial.

- **UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules):** Emphasize humane conditions of detention and segregation of undertrials from convicts.

Indian courts have drawn upon these principles to strengthen constitutional protections for undertrials.

6. Critical Gaps in the Legal Framework

Despite robust constitutional and statutory safeguards, several gaps persist:

1. **Implementation Failure:** Section 436A CrPC is poorly enforced, leading to prolonged detention.
2. **Judicial Delays:** Shortage of judges and slow trials exacerbate undertrial numbers.
3. **Bail Inaccessibility:** Bail remains contingent on financial sureties, disadvantaging the poor.
4. **Prison Infrastructure:** Outdated prison laws (Prisons Act, 1894) fail to address modern realities.
5. **Lack of Uniform Standards:** Disparities across states in bail enforcement and prison management.

Judicial Interventions

The Indian judiciary—especially the Supreme Court and constitutional benches of High Courts—has been the primary engine driving reforms for undertrial rights, prison decongestion, and humane custody. Across five decades, courts have (i) constitutionalized speedy trial and humane treatment, (ii) liberalized bail while restraining routine arrests, (iii) operationalized statutory safeguards like Section 436A CrPC through monitoring mechanisms, and (iv) issued structural directions to states and prison departments. Post-BNS (2023), these interventions continue to supply interpretive ballast so that legislative change translates into liberty on the ground.

1) Speedy Trial & Undertrial Decongestion: From Principle to Enforcement

- **Foundational recognition:** In *Hussainara Khatoon v. State of Bihar* (1979) ^[27], the Supreme Court read the right to speedy trial into Article 21, after uncovering mass undertrial incarceration for petty offences. Follow-on cases (*Kadra Pahadiya*, *Sheela Barse*) entrenched the duty of the State to prevent indefinite pre-trial detention and ensure legal aid.
- **Structural monitoring:** In *In Re: Inhuman Conditions in 1382 Prisons* (2016), the Court treated overcrowding as a constitutional crisis, seeking state-wise action plans on infrastructure, staff, and health. High Courts issued continuing mandamus to track compliance.
- **Pandemic-triggered decongestion:** In *In Re: Contagion of COVID-19 in Prisons* (2020), the Supreme Court ordered High-Powered Committees (HPCs) in every State/UT to identify categories of undertrials/convicts eligible for interim bail/parole, an important stress test for decongestion protocols.
- **Impact & gaps:** Speedy trial is now a settled fundamental right; yet, pendency, police/prosecution vacancies, and frequent adjournments blunt its effect. Temporary decongestion (e.g., COVID-19 bail) showed prisons can be thinned without compromising safety, but rates rebounded once emergency measures lapsed. The judiciary's message is clear: liberty cannot hinge on docket congestion.

2) Bail Jurisprudence: “Bail is the Rule, Jail the Exception”

- **Philosophical core:** Gudikanti Narasimhulu (1978) framed bail as an instrument of liberty, not punishment; Moti Ram (1978) condemned wealth-based bail, insisting that poverty cannot defeat release. Dataram Singh (2018) reiterated that bail is the norm.
- **Arrest restraint as bail reform:** In *Arnesh Kumar* (2014), the Court curbed routine arrests for offences up to 7 years by requiring reasons and Section 41A notices—de-facto reducing inflow into prisons and recentring bail decisions on necessity.
- **Modern consolidation:** *Satender Kumar Antil v. CBI* (2022, followed up in 2023) ^[33] issued a stepwise matrix: avoid arrest when investigation can proceed without custody; prefer summons over warrants; and grant bail where statutory conditions are met. It demanded culture change—from reflexive custody to reasoned restraint.
- **Anticipatory bail:** *Sushila Aggarwal v. NCT of Delhi* (2020) held that anticipatory bail need not be time-bound by default, protecting liberty against abusive arrests while permitting conditions tailored to case-specific risks.
- **Economic/ special statutes:** Bail under PMLA/NDPS remains stringent (twin conditions, reverse burdens), but courts continue to insist on proportionality and timely trials. The general drift remains: liberal for ordinary crimes, calibrated for special laws—while never abandoning Article 21.
- **Impact & gaps:** Despite rigorous doctrine, trial courts sometimes default to custody due to risk aversion or perceived public pressure. Surety-heavy conditions and verification practices still exclude the poor. The Supreme Court's blueprint exists; implementation discipline is the missing piece.

3) Default Bail & Long Custody: Making Section 167(2) and 436A CrPC Bite

- **Default bail as an enforceable right:** *Rakesh Kumar Paul* (2017) ^[34] clarified the computation of 60/90-day limits and affirmed default bail as an indefeasible right once conditions are met. Trial courts have been cautioned not to defeat it through technicalities.
- **Half-sentence rule (Section 436A):** The Court has repeatedly instructed Magistrates/Sessions Judges to suo motu review undertrial custody and release those who have crossed half the maximum sentence—establishing Undertrial Review Committees (UTRCs) under the District & Sessions Judge, with police, DLSA, and prison officials to screen eligible prisoners.
- **Bhim Singh directions:** The Supreme Court's *Bhim Singh v. Union of India* orders (2014-15) pushed States to operationalize 436A releases and to avoid mechanical remands.
- **Impact & gaps:** UTRCs work where District Judges and Legal Services Authorities meet regularly and prisons maintain accurate sentence-max data. Elsewhere, weak data pipelines and risk-averse stances stall releases. The Court's stance is categorical: overstay beyond statutory thresholds is unconstitutional detention.

4) Humane Custody & Prisoners' Rights: From Handcuffs to Health

- **Dignity jurisprudence:** *Sunil Batra I & II* (1978-80) condemned solitary confinement/inhuman practices;

Prem Shankar Shukla (1980) restricted handcuffing to exceptional circumstances with reasons; *Charles Sobhraj* underscored that incarceration does not eclipse fundamental rights.

- **Women, children, and vulnerable prisoners:** In *Sheela Barse* cases, the Court mandated safeguards for women/children in custody, separate lock-ups, legal aid, and production protocols—now reflected in many state prison manuals.
- **Health and mental healthcare:** Post-2016, the Court emphasized medical infrastructure, psychiatric support, and death-in-custody inquiries, aligning with the **Nelson Mandela Rules**. Directions include CCTVs, independent inspection boards, and prompt magisterial inquiries for custodial violence.
- **Impact & gaps:** Jurisprudence has humanized custody standards, but overcrowding neutralizes gains—sanitation, segregation (undertrial vs convict), and healthcare triage break down when occupancy exceeds capacity by 30-70%.

5) Process Discipline: Reasoned Remand, Non-Mechanical Adjournments, and e-Processes

- **Reasoned remand:** Courts have warned against rubber-stamp remands, insisting on individualized assessment (necessity, flight risk, tampering).
- **Adjournment control:** High Courts use supervisory jurisdiction to curb “adjournment culture,” directing day-to-day trials in long-custody matters and live case-flow management.
- **Technology enablement:** Video-conferencing for production, e-mulakat, and e-Prisons databases were judicially encouraged—these reduce transit custody, improve family/legal access, and help UTRCs verify eligibility under 436A.
- **Impact & gaps:** Digitization improved transparency where data quality is high. The limiting factor remains human capacity—prison clerical backlogs, police file delays, and under-resourced legal aid.

6) COVID-19 as Catalyst: Interim Bail, Parole, and Risk-Based Release

- **High-Powered Committees (HPCs):** The Supreme Court’s 2020 orders empowered HPCs to craft eligibility grids (offence gravity, sentence length, health/age vulnerabilities). Many States released thousands on interim bail/parole—proof of concept for risk-based decongestion.
- **After-action learning:** Recidivism spikes feared by some did not materialize at scale; courts have used this experience to endorse calibrated release models for non-violent offences and the medically vulnerable.
- **Impact & gaps:** Gains were temporary; durable impact requires codifying risk-based release criteria and building probation/social-work capacity.

7) Victim-Liberty Balance & Special Laws: Proportionality as the Anchor

- **Proportionality lens:** In bail for serious offences (sexual crimes, terror, economic offences), courts apply structured discretion—weighing gravity, prima facie case, victim safety, and trial timelines, while guarding against punitive pre-trial detention.
- **Reasoned orders:** Appellate courts increasingly set

aside cryptic rejections or grants of bail, demanding speaking orders that demonstrate application of mind—this improves consistency and appellate review.

- **Impact & gaps:** Harmonizing victim rights with liberty is now doctrinally mature. The challenge: ensuring trial courts consistently apply the proportionality template, rather than defaulting to custody due to public sentiment.

8) Post-BNS (2023) Interface: What the Courts Are Poised to Do

- **Harmonization with CrPC safeguards:** Although BNS mainly recodifies substantive offences, courts are reading it in pari materia with CrPC protections (Sections 41, 167(2), 436, 436A, 437-439) and settled bail jurisprudence, ensuring that recodification does not dilute liberty.
- **Petty offences & compounding:** Where BNS rationalizes minor offences/quantums, courts have encouraged compounding/plea bargaining and non-custodial responses, limiting fresh undertrial inflows.
- **Mens rea and grading:** Re-graded offences invite proportional bail—courts calibrate conditions (reporting, travel limits, digital monitoring) instead of incarceration, especially where custodial interrogation is unnecessary.
- **What to watch:** As BNS jurisprudence deepens, expect (i) model bail condition playbooks, (ii) state-wise SOPs tying e-Prisons data to UTRCs, and (iii) sentencing/bond innovation (community service, bonds without sureties) for low-harm conduct.

9) Implementation Toolkits Crafted by Courts

- **Undertrial Review Committees (UTRCs):** Monthly prison-gate review to identify 436A-eligible inmates, bailable-offence detainees, the elderly/ill, women, juveniles in conflict with law (to be diverted to JJ systems).
- **District Legal Services Authorities (DLSA):** Jail legal aid clinics; mass bail verification drives; paralegal volunteers to trace sureties and documents.
- **Standard Forms & Dashboards:** Many High Courts have mandated standardized checklists for arrest, remand, and bail; some require dashboards showing time-served vs maximum sentence for quick 436A decisions.
- **Training & audits:** Judicial academies run modules on Armesh Kumar and Satender Antil compliance; High Courts order prison audits (CCTV, medical, segregation) and regular reports.

10) Measurable Effects—and the Persistent Fault-Lines What has improved

- Speedy-trial consciousness and scrutiny of long custody.
- Wider use of notices instead of arrest for mid-range offences.
- Greater grant of anticipatory/regular bail with tailored conditions.
- Institutionalization of UTRCs and HPCs; better visibility on over-stay cases.
- Expansion of legal aid presence inside prisons and use of e-connect.

What still breaks down

- **Inertia at the first point of contact:** routine arrests; mechanical remands.

- **Wealth-biased liberty:** surety-centric bail shuts out the poor.
- **Data fragility:** errors in sentence-max computation block 436A releases.
- **Infrastructure lag:** over-occupancy erases gains in health and segregation.
- **Special-law gravity bias:** delays + stringent standards = long undertrial spells.

11) Emerging Judicial Directions That Could Close the Gap

- Presumptive non-custody for non-violent, low-harm BNS offences unless custody is shown to be necessary (flight/tampering risks proved, not presumed).
- **Condition innovation:** more personal bonds, fewer surety requirements; use of community-based supervision and digital check-ins where proportionate.
- **Automatic 436A triggers:** e-Prisons flags that auto-list matters before UTRCs/magistrates; no-objection protocols from prosecution for clear-cut eligibility.
- **Time-boxed trials:** day-to-day hearings in long-custody cases with monthly custody-to-progress audits by Sessions Judges.
- **Accountability loops:** adverse cost/contempt signals for non-compliance with Arnesh Kumar/Satender Antil; annual High Court “liberty compliance” reports.

Bail Reforms and Undertrial Rights

The issue of bail in India occupies a central position in the discourse on criminal justice reform, particularly in the wake of persistent prison overcrowding and the prolonged incarceration of undertrial prisoners. Bail is not merely a procedural mechanism; it is intrinsically tied to the constitutional guarantees of liberty, equality, and fair trial enshrined under Articles 14, 19, and 21 of the Indian Constitution. The philosophy underlying bail stems from the maxim that “*bail is the rule, jail the exception*,” thereby ensuring that individuals are not subjected to punitive conditions even before they are proven guilty. However, in practice, the denial of bail, stringent conditions for release, and systemic inefficiencies often result in the violation of undertrial prisoners’ rights, leading to a cycle of injustice that undermines the fairness of India’s criminal justice system.

Historical and Constitutional Context

The jurisprudence on bail in India is rooted in the recognition that personal liberty is a fundamental right. The Supreme Court, in *Hussainara Khatoon v. State of Bihar* (1979)^[27], highlighted the plight of thousands of undertrials languishing in prisons for years without trial, emphasizing that the right to speedy trial and bail must be protected. The Bharatiya Nagarik Suraksha Sanhita, 2023^[16] (BNSS), which replaces the CrPC, has attempted to refine bail provisions, introducing more clarity and streamlined procedures, particularly with respect to undertrial prisoners. The BNSS stresses time-bound investigations, mandatory disclosure of reasons for denying bail, and provisions for the release of prisoners who have spent extended periods in pre-trial detention.

Bail Reforms under BNSS, 2023

One of the most notable changes brought by the BNSS, 2023, is the effort to reduce prolonged detention by limiting the maximum period for which an undertrial may remain in custody before being entitled to statutory bail. Under Section

479 of the BNSS, a person who has undergone detention for a period extending to one-half of the maximum imprisonment specified for the alleged offense is eligible for release on bail, unless the crime attracts the death penalty. This provision reinforces the presumption of innocence and seeks to address the growing problem of prisoners being held longer as undertrials than the actual sentence they might receive if convicted.

Additionally, the BNSS introduces procedural safeguards such as digital recordkeeping of bail orders, mandatory reasoning in cases of bail denial, and special consideration for women, children, and persons with disabilities. These reforms aim to bring accountability and transparency to the bail process, while also aligning with international human rights obligations under instruments like the International Covenant on Civil and Political Rights (ICCPR), which India has ratified.

Judicial Interpretation of Bail Rights

The judiciary has played a pivotal role in shaping the contours of bail jurisprudence. In *State of Rajasthan v. Balchand* (1977), the Supreme Court reiterated that bail is the rule and jail is the exception, establishing a standard that bail decisions must not be arbitrary but guided by principles of justice and fairness. More recently, in *Satender Kumar Antil v. CBI* (2022)^[33], the Supreme Court issued comprehensive guidelines on bail to prevent unnecessary incarceration and directed courts to prioritize personal liberty while considering bail applications. The judgment emphasized that arrest should not be mechanical and bail should not be denied as a matter of routine.

Similarly, in *Arnesh Kumar v. State of Bihar* (2014), the Court issued guidelines restricting the arrest of individuals in cases where the maximum punishment is seven years or less, thereby indirectly contributing to bail reform and protecting undertrial rights. These judicial interventions underscore the judiciary’s recognition of the deep link between bail, liberty, and prison overcrowding.

Undertrial Rights and Human Dignity

Undertrial prisoners form the majority of India’s prison population, with the National Crime Records Bureau (NCRB) reporting in 2023 that over 77% of inmates are undertrials. Many of these individuals are poor, marginalized, and lack access to effective legal aid. Their prolonged detention not only violates Article 21 but also leads to a range of social and economic consequences, such as loss of livelihood, disruption of families, and stigmatization. The Supreme Court, in *Moti Ram v. State of M.P.* (1978), observed that bail conditions must be fair and reasonable, and should not discriminate against the poor. Excessive surety amounts or onerous bail conditions often exclude economically weaker sections, thereby violating the principle of equality before the law.

The recognition of undertrial rights has also been reinforced through statutory frameworks such as the Legal Services Authorities Act, 1987, which mandates free legal aid to those unable to afford representation. Combined with the constitutional obligation to ensure dignity and liberty, these rights form the cornerstone of bail reforms aimed at reducing unnecessary pre-trial incarceration.

Comparative Analysis

A meaningful evaluation of judicial interventions on prison overcrowding, bail reforms, and the rights of undertrial

prisoners in India requires a comparative perspective with other jurisdictions. Examining global practices highlights both the strengths and gaps in the Indian criminal justice framework, particularly in the post-Bharatiya Nyaya Sanhita (BNS), 2023^[16], context. Comparative legal insights also underline how different systems balance efficiency, fairness, and human rights protection.

One significant comparison can be drawn with the United States, where overcrowding and pre-trial detention are also major concerns. The U.S. Constitution guarantees the right to a speedy trial under the Sixth Amendment, which places a constitutional obligation on courts to avoid indefinite detention of undertrial prisoners. However, the heavy reliance on cash bail has been criticized as discriminatory against the poor. Several states, including New Jersey and California, have initiated bail reform by shifting from cash-based systems to risk-assessment models that evaluate the likelihood of re-offending or absconding. In contrast, India's approach to bail remains largely discretionary, with socio-economic inequalities and procedural delays often leading to undertrial prisoners languishing in jails. India's recent BNS framework emphasizes bail as a rule in certain cases, but unlike U.S. reforms, it lacks a uniform risk-based assessment system.

In United Kingdom, the Bail Act, 1976 created a statutory presumption in favor of bail, which ensures that deprivation of liberty prior to conviction is treated as an exception. British courts are bound to justify any denial of bail with clear reasons, especially in light of the Human Rights Act, 1998, which incorporates Article 5 of the European Convention on Human Rights (ECHR) guaranteeing the right to liberty. This stands in contrast with Indian practice, where despite the Supreme Court's repeated emphasis on "bail not jail," courts often impose stringent conditions or delay hearings, effectively undermining the principle. Post-BNS, 2023, India attempts to streamline procedures for bail and limit unnecessary arrests, but the discretionary nature of judicial decision-making continues to generate inconsistency.

Canada provides another useful model, where Section 11(e) of the Canadian Charter of Rights and Freedoms guarantees the right "not to be denied reasonable bail without just cause." Canadian courts have repeatedly held that pre-trial detention should be minimized, emphasizing proportionality and necessity. A landmark ruling in *R. v. Antic* (2017) reiterated that release on the least onerous conditions should be the starting point for bail hearings. Compared to India, where undertrials make up nearly 77% of the prison population, Canada's legal structure actively guards against over-incarceration through both constitutional safeguards and judicial guidelines.

South Africa, with its post-apartheid Constitution, provides another instructive contrast. Section 35 of the South African Constitution explicitly recognizes the rights of detained and accused persons, including the right to be released on bail if the interests of justice permit. The judiciary in South Africa has also been proactive in recognizing overcrowding as a constitutional violation of the right to dignity and humane treatment. Indian courts, while sympathetic, often stop short of enforcing systemic remedies, relying instead on case-specific directions.

At the international level, the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and the International Covenant on Civil and Political Rights (ICCPR) emphasize that pre-trial detention should not be the norm and should only be applied as a last

resort. Many countries have adopted these standards into domestic law, ensuring judicial scrutiny and periodic review of detention. India, as a signatory, has referenced these obligations in judicial pronouncements, but the implementation gap remains wide due to systemic inefficiencies, poor infrastructure, and lack of accountability.

In summary, comparative analysis reveals that while India's judiciary has acknowledged the crisis of overcrowding and undertrial detention, the structural reforms needed to operationalize the principle of liberty are still limited. Countries like the UK and Canada have codified presumptions in favor of bail, backed by constitutional or statutory mandates, while the U.S. and South Africa have experimented with innovative models balancing risk and fairness. India's post-BNS criminal justice framework provides a window of opportunity to borrow best practices from these jurisdictions by institutionalizing bail presumptions, adopting non-custodial alternatives, and ensuring stricter oversight on undertrial detention. Such comparative insights not only enrich the debate on reform but also underline the urgency of aligning India's system with global human rights standards.

Findings

The study reveals several critical insights into the problem of prison overcrowding, bail jurisprudence, and the protection of undertrial rights within India's post-BNS criminal justice framework.

First, despite progressive legal reforms and judicial interventions, prison overcrowding continues to remain a chronic challenge, with more than two-thirds of the prison population comprising undertrial prisoners. The research indicates that the Bharatiya Nyaya Sanhita, 2023^[16] (BNS) introduces certain procedural streamlining measures, yet their effective implementation is inconsistent across states due to systemic bottlenecks, lack of infrastructure, and inadequate legal aid mechanisms.

Second, the judiciary has played a transformative role in expanding the scope of constitutional protections under Articles 21 and 39A, particularly through judgments emphasizing speedy trial, fair bail considerations, and humane treatment of prisoners. However, while courts have often issued strong directives, the gap between judicial pronouncements and executive compliance remains wide.

Third, bail reforms have progressed towards a shift from "jail-first" to "bail-first" jurisprudence, but the reality shows a mismatch between legal principles and ground-level practices. Bail orders are frequently delayed due to procedural complexities, financial conditions imposed on poor accused, and insufficient monitoring of magistrates' discretion. The data indicates that although the Supreme Court has laid down liberal principles for bail, the subordinate judiciary tends to adopt a risk-averse approach, resulting in prolonged incarceration of undertrials.

Fourth, a comparative assessment with global practices, particularly in countries like the United Kingdom, United States, and South Africa, suggests that India lags behind in adopting non-custodial alternatives such as probation, electronic monitoring, and community service. The absence of structured diversionary mechanisms exacerbates overcrowding, whereas other jurisdictions have effectively balanced public safety with individual liberty.

Fifth, systemic challenges such as delayed investigation, shortage of judges, inadequate use of technology, and lack of

accountability within prison administration continue to undermine reforms. The study also highlights that marginalized groups—women, Dalits, minorities, and economically weaker sections—are disproportionately represented in the undertrial population, pointing to structural inequalities in access to justice.

Finally, the research concludes that while legislative changes under BNS, 2023, and judicial activism provide a promising framework for reform, the success of these measures depends heavily on political will, institutional strengthening, and the creation of a culture of accountability. Unless the criminal justice system embraces technology-driven monitoring, wider bail reform implementation, and prison decongestion strategies, the constitutional promise of justice for undertrials will remain elusive.

Recommendations

In light of the issues of prison overcrowding, the rights of undertrial prisoners, and the evolving criminal justice framework under the Bharatiya Nyaya Sanhita (BNS), 2023^[16], several reforms are necessary to create a more humane, efficient, and rights-centric system. The following recommendations are proposed:

1. Strengthening Bail Reforms

- **Codify liberal bail practices:** Bail should be treated as the rule and jail as the exception, in line with Article 21 and the principles reiterated in *Hussainara Khatoon v. State of Bihar*. Clear legislative guidelines must be incorporated within the BNS to prevent arbitrary denial of bail.
- **Promote non-monetary bail conditions:** Courts should encourage alternatives such as personal bonds, surety-free release, and community-based supervision to reduce economic discrimination against poor prisoners.
- **Fast-track bail hearings:** Dedicated bail benches in High Courts and District Courts should ensure timely disposal of bail applications, especially for undertrial prisoners facing minor or non-heinous charges.

2. Reducing Undertrial Population

- **Statutory timelines for trial completion:** The BNS framework should introduce strict limits for completing trials, with automatic bail if the trial is not concluded within a stipulated period.
- **Decriminalization of minor offences:** Non-serious offences (such as petty thefts or regulatory breaches) should be decriminalized or punished through fines and community service instead of imprisonment.
- **Promotion of plea bargaining and compounding:** Expanding plea bargaining provisions can help dispose of minor cases faster and reduce undertrial incarceration.

3. Prison Reforms

- **Adopt alternatives to incarceration:** Community service, probation, and restorative justice practices should be emphasized as alternatives to imprisonment for first-time and non-violent offenders.
- **Introduce modern prison management practices:** Use technology for real-time monitoring of prison occupancy, digitization of prisoner records, and tracking of undertrial cases to avoid prolonged detention.
- **Humanizing prison conditions:** The government must implement the Mulla Committee and Krishna Iyer Committee recommendations to ensure adequate food,

health care, sanitation, and rehabilitation services.

4. Judicial and Institutional Mechanisms

- **Constitution of Undertrial Review Committees (URCs):** These committees must meet regularly in every district to review cases of undertrials eligible for release, as directed by the Supreme Court in *Inhuman Conditions in 1382 Prisons, In Re* (2016).
- **Judicial accountability:** Judges must be sensitized to prioritize liberty while deciding bail and remand matters. Regular training through the National Judicial Academy can strengthen rights-based adjudication.
- **Strengthening Legal Aid Services:** Legal Services Authorities should be more proactive in assisting undertrial prisoners, ensuring representation in every bail hearing, and creating awareness of their rights.

5. Legislative and Policy Interventions

- **Harmonization of BNS, BNSS, and BSA with constitutional principles:** The new criminal law codes must be reviewed to align with the constitutional mandate of liberty and dignity.
- **Parliamentary oversight of prison reforms:** A Parliamentary Standing Committee on Prison and Bail Reforms should be created to monitor the implementation of judicial directions and government initiatives.
- **Special focus on marginalized groups:** Women, juveniles, persons with disabilities, and socio-economically weaker undertrials require specific safeguards to prevent disproportionate suffering in custody.

6. Comparative Best Practices

- **Adopt global models:** Drawing from jurisdictions such as the UK and Canada, India can adopt conditional release mechanisms, electronic monitoring, and restorative justice circles as effective alternatives to incarceration.
- **Strengthen pre-trial diversion programs:** Inspired by U.S. and European models, India can create structured diversion schemes where offenders are directed towards rehabilitation rather than prolonged detention.

7. Data, Transparency, and Accountability

- **Prison data digitization:** The National Crime Records Bureau (NCRB) should maintain updated, transparent, and publicly accessible data on undertrial prisoners, overcrowding statistics, and bail outcomes.
- **Independent prison oversight boards:** Establish independent monitoring bodies at state and district levels, including human rights commissions, civil society, and judicial members, to ensure accountability.
- **Impact assessment of BNS, 2023:** Periodic evaluations of the BNS and related reforms must be conducted to ensure they are reducing prison overcrowding and safeguarding undertrial rights effectively.

8. Technology-Driven Solutions

- **E-Courts and virtual hearings:** Strengthening e-court mechanisms can expedite hearings, particularly bail applications, and reduce logistical delays.
- **AI-based tracking systems:** Artificial intelligence can be used to flag cases where undertrials have exceeded statutory detention limits, automatically alerting courts and review committees.

- **Video-conferencing for remand extension:** Instead of physically producing undertrials in crowded courtrooms, video-conferencing can minimize delays and risks of custodial abuse.

Conclusion

The issue of prison overcrowding and the plight of undertrial prisoners in India reflects a deeper crisis within the criminal justice system—one that raises critical questions about access to justice, protection of fundamental rights, and the effectiveness of legal and judicial reforms. The introduction of the Bharatiya Nyaya Sanhita (BNS), 2023^[16], has undoubtedly marked a significant shift in India's penal landscape, seeking to replace outdated colonial provisions with laws that resonate with contemporary realities. Yet, the fundamental challenge lies not only in the text of the law but in its implementation, interpretation, and alignment with constitutional guarantees. The judiciary has played a pivotal role in highlighting the plight of undertrial prisoners and in devising mechanisms that balance the need for justice delivery with the imperative of human rights protection. Landmark interventions such as *Hussainara Khatoon v. State of Bihar* and subsequent judicial pronouncements have consistently emphasized that the right to a speedy trial and bail is an essential part of Article 21. However, despite such progressive jurisprudence, systemic failures—ranging from delay in trials, inadequate infrastructure, shortage of judges, and administrative inefficiencies—have perpetuated the problem of overcrowded prisons and prolonged incarceration of undertrial prisoners.

Bail reforms introduced under the BNS and reinforced by judicial directions seek to mitigate these challenges by expanding the scope of bail, reducing reliance on custodial detention, and introducing alternatives such as electronic monitoring and community service. Yet, the reality on the ground reflects a stark disconnect between policy and practice. Socio-economic inequality, lack of legal aid, and procedural complexities disproportionately affect marginalized prisoners, thereby reinforcing cycles of injustice. The judiciary's proactive stance in recent years, particularly in reiterating the principle that "bail is the rule and jail is the exception," has attempted to address these concerns, but systemic inertia continues to undermine the effectiveness of these measures.

The comparative analysis with other jurisdictions reveals that India has been slow to adopt modern correctional practices such as parole reforms, extensive use of non-custodial sentences, and technological innovations in prison management. Countries such as the UK and the US, despite their own challenges, have developed structured bail mechanisms, community corrections, and alternative sentencing frameworks that India can learn from. The emphasis on restorative justice in other systems provides a roadmap for India to reimagine its criminal justice approach from one centered on punishment to one grounded in rehabilitation and reintegration.

Ultimately, the findings of this research demonstrate that prison overcrowding and the neglect of undertrial rights are not merely administrative issues but profound questions of justice, liberty, and constitutional morality. The recommendations point towards a holistic reform strategy: strengthening judicial accountability, expanding legal aid services, fast-tracking bail hearings, leveraging technology for prison management, and introducing community-based

alternatives to incarceration. Such reforms must be accompanied by a cultural shift within the judiciary, legislature, and executive, recognizing that the protection of undertrial rights is not an act of benevolence but a constitutional mandate.

In conclusion, the post-BNS criminal justice framework provides India with an opportunity to redefine its penal philosophy and rectify the longstanding injustices suffered by undertrial prisoners. The judiciary's role, though transformative, cannot substitute for systemic reforms that address the root causes of overcrowding and delay. What is required is a coordinated effort among the judiciary, legislature, executive, and civil society to uphold the dignity and rights of every individual caught in the criminal justice net. Only then can the promise of justice—fair, equitable, and accessible—be truly realized, ensuring that the prisons of India no longer remain sites of forgotten justice but symbols of a humane and constitutional order.

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